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Street Railway Grants in Illinois

STREET RAILWAY GRANTS IN ILLINOIS

BY

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I HEREBY RECOMMEND THAT THE THESIS PREPARED UNDER MY SUPER-
VISION BY Earle Underwood Rugg

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Foreword.

This study is the result of an investigation to determine to what degree fifteen cities in Illinois have protected themselves in the granting of licenses, popularly called franchises, to street railway companies. Originally it was intended to include several other cities, but great difficulty was experienced in getting copies of licenses. Endeavors to get copies of licenses from Peoria, Moline, Galesburg and Freeport met with no success. Hence, those cities were not included in the survey. It is due to the foresight of the University Library, and Professor Fairlie in charge of the Municipal Reference Library, that I had access to the various codes and ordinances of the cities studied, which were necessary to a thorough examination of the licenses of the fifteen cities under review.

In addition to an examination into the law governing street railway grants and a general analysis of the various stipulations enumerated in the licenses, as grouped under the several specific problems of street railway transportation, there is offered a summary of the existing situation, city by city, in order to present these problems from the point of view of the particular cities concerned. The charts and tables in the appendix are based upon personal investigation and observations or upon answers to questions sent to city officials of the fifteen cities under review.

The timeliness of this study is indicated by the fact that nearly one-half of the 144 grants covered by this study are to expire within the next ten years. Cities considering the granting of new or the renewal of old licenses, will do well to consider stipulations which will protect public rights to a much higher degree than at present.



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Street Railway Grants in Illinois.

Chapter I.

The Legal status of Street Railways.

Since the famous Dartmouth College case in which a charter to a corporation was held to be a valid contract which neither party could modify without the free consent of the other, most states have reserved in their Constitutions the express right to alter or amend such charters. The grants made by municipal corporations, the creatures of the state, to public service companies have also been held to be binding, once the conditions of the grant or license imposed by the city have been fulfilled.

The privileges conferred upon the grantee by virtue of a license to occupy the streets are such that while they may not be taken away they may be regulated and controlled. This fundamental rule was declared in the case of *Munn v Illinois* ⁽¹⁾ by the United States Supreme Court. In this case the question was raised whether the Illinois legislature could provide by law for the regulation of grain elevators by fixing maximum charges. In answer to the contention of Munn that such a power could not be exercised by the legislature the court laid down the far reaching principle that any business clothed with a public interest was subject to governmental regulation.

There are several distinct and well defined elements essential to the operation of public utilities in Illinois. 1. a fran-

(1) 94 U.S. 113.

chise must emanate from the state, and the right of a public utility corporation to exist is, under Illinois law, a franchise. 2.

the privileges granted by a municipality constitute, only, a license to occupy the streets. (1) This distinction between a franchise and a license is an important one in this study, on account of popular conception that the term 'franchise' signifies the granting of privileges to a public service company by the city; for example, the right to construct and operate a street railway. Both franchises and licenses are similar in these respects: 1. Neither can be exercised by common or inherent right. 2. They are in essence nothing but privileges to do certain enumerated things. 3. For both types of grants the rights to be conferred must be given by a public authority. An important distinction to be made between a franchise and license is the fact that while there is a large discretionary power resting with the public in each case, still a franchise is secured under general law from the state and can be obtained by any corporation that can qualify under the terms of the state law, on the other hand, a license is secured by special act or ordinance from the agent of the state, the city.

This study is an attempt to present the existing situation with respect to one type of public utilities, i.e. street railways, as seen from an intensive examination of the ordinances granting privileges to street railway companies and personal investigation of the utilities under review to discover to what degree the present licenses are satisfactory. It is significant that one-half

(1) for definitions see Kent's Commentaries, vol. 3, p. 458.
McQuillan, Municipal Corporations, p. 1905.
Mill v County of St. Clair, 7 Ill 197.

of the present licenses in the cities to be studied will expire in the next decade. Because of this fact it is to be hoped that a presentation of the status of street railway grants in Illinois studied from the standpoint of the legislative measures, both of the state and local law, as well as the constitutional aspects of the problem, will show, to some degree, what measures are necessary to protect the rights of the public in the matter of renewing old or in granting new licenses to this type of public utility.

A. Essentials in the granting of licenses.

1. Article 2, section 14 of the Constitution of Illinois provides,

"No law impairing the obligation of a contract, or making any irrevocable grant of a special privilege or immunity shall be passed."

The rule established by the courts in interpreting this clause is that once conditions imposed by the grant are complied with, such a grant is a binding and valid contract and cannot be impaired by subsequent legislation. In *Parmalee v Chicago* ⁽¹⁾ a street railway had been permitted to construct and operate a railway in the city streets on condition that it keep a portion of the street in repair. The court ruled that the agreement was a valid contract, the company having accepted the grant and the conditions, and, therefore, the city could compel the company to keep its contract.

In the case of *People v Central Union Telephone Company*, ⁽²⁾ the company had been given a license which failed to mention a time limit. On the alleged ground that the Central Union Company

(1) 60 Ill 267.

(2) 232 Ill 262.

had failed to comply with the terms of their license, the city of Rock Island had given like privileges to the Moline Telephone Company, a rival of the complainant. In defense the complainant pleaded that its rights were irrevocable and also that it was willing to comply with the terms set forth in the grant. On the point as to the time limit the court asserted that because the agreement of the Central Union Company has specifically stated that in case one party failed to comply, the other party could treat the agreement as at an end, it was void. Therefore, the court held that this agreement was not irrevocable in the absence of a specific time limit.

It is evident, then, that the acceptance of the license creates a binding contract. What is, at the outset, merely a license to occupy the streets for a public purpose, becomes when the conditions are carried out a valid obligation which, under the ^{first} rule in the Parmalee case, cannot be impaired by any subsequent legislation or act.

2. By far the most important clause of the state constitution affecting public utilities is article 11, section 4.

"No law shall be passed by the General Assembly granting the right to construct and operate a street railway within any city, town or incorporated village without requiring the consent of the local authorities having control of the streets or highways to be occupied by such railway."

Decisions of the Supreme Court of Illinois interpret this clause in a negative sense, however. This is illustrated in the case of Chicago and Southern Traction Company v Illinois Central Rail -

road Company.⁽¹⁾ The situation was that the State Railroad and Warehouse Commission had denied to the traction company the right to cross the Illinois Central tracks at 157th St. in Harvey, and the street railway company relied on the 'local consent' clause to uphold their contention that they could cross the tracks of the railroad at that point. The Supreme Court upheld the ruling of the State Commission, however, saying that this clause does not operate to divest the state of its paramount authority over the highways, or in other words, there is a general police power remaining to the state.

In the case of Chicago v Mutual Electric Power Company,⁽²⁾ the court adopted a narrow interpretation of this clause and reaffirmed the proposition that a city can exercise no powers except those delegated to it, and that grants by virtue of delegated powers must be strictly construed.

Again a somewhat different point of view is seen in the case of Smith v McDowell⁽³⁾ which involved the question whether under a statute giving a municipality control of the streets power existed to vacate the streets. The court, in deciding that such a power did not exist, went on to state that the provision that grants must not be conferred without local consent did not give exclusive control to the city.

Another case involving this clause is the case of Chicago v Rumsey.⁽⁴⁾ This suit was in the nature of proceedings to obtain damages resulting to private property on account of certain tunnelling operations pursued by the city acting under legislative

(1) 246 Ill 146, also held recently in State Public Utilities Commission v Chicago and West Towns Railway Co, 275 Ill 555.
(2) 55 Ill App 424.
(3) 148 Ill 51.
(4) 87 Ill 348.

authority. Even at this early date⁽¹⁾ the court held that it was the policy of the state to vest the fee of the streets in the city. However, as the city is merely the agent of the state, and thereby holds the streets for the use of the public, it follows that the city can exercise only such authority over the streets as may be delegated to it by the legislature, the representative body of the public. Therefore, private property owners cannot object to acts carried out in pursuance of legislative authority.

However, most significant in relation to the 'local consent' clause is the recent decision of the Illinois Supreme Court⁽²⁾ in the case of Chicago v Wm. L. O'Connell et al (chairman of the Illinois Public Utilities Commission). To understand the importance of this case it is necessary to state the issue that is involved. By the 1907 ordinances as well as the unification agreement of 1913 between the several street railways operating in the city of Chicago and the city, the companies agreed to certain conditions imposed by the city. Among these stipulations we find,

"the use of 'trailers' is prohibited after the expiration of one year from the passage of this ordinance."⁽³⁾

On September 29, 1915, after complaint and an investigation into the service conditions of the Chicago street railways, the State Public Utilities Commission issued an elaborate order in pursuance of the authority given to it by the Public Utility Act of 1913 to regulate service, which was designed to remedy certain conditions having to do with poor service. Section 12 of this order produces the issue on which the case turns,

(1) 1833.

(2) Author furnished proof sheets of the case by the Illinois Official Reporter, Mr. Samuel P. Irwin, April 30, 1917 and citations of case are to pages of that opinion.

(3) Section 6, 1907 Street Railway Ordinances.

"that within sixty days they (the street railway companies) shall install and use such 'trailers' as may be necessary to comply with the service standards herein fixed as to the 'rush hour' period."

With the issue thus defined the Companies found themselves in the dilemma of not knowing which authority to obey, the municipality under the contract ordinances of 1907 and 1913, or the State Commission in its order of September 29, 1915. The city immediately made a motion for an injunction to restrain the Commission from enforcing the order and the street railway companies filed a cross bill praying likewise that they be not compelled to comply with this order. The city attacked the order of the state commission mainly on the ground of the 'local consent' clause in the Constitution, contending that the clause in question impliedly gives the city power to regulate and impose conditions as to the use of the streets.

Judge Taylor, in the Circuit Court of Cook County, granted the petition for injunction in June 1916 and thereby restrained the State Public Utilities Commission from enforcing this order. The Commission prosecuted an appeal to the Illinois Supreme Court and by a recent decision the latter court entered a decree to dissolve the injunction and remanded the case back to the Circuit Court of Cook County with orders to sustain the demurrers of the State Commission.

This opinion asserts that the 'local consent' clause in the Constitution is merely a check upon the unbridled power of the legislature to grant local franchises, so that the cities shall

be possessed of the right to consent to the location of all tracks within their jurisdiction. The Illinois Supreme Court has recently disposed of the same contention in the case of State Public Utility Commission v Chicago and West Towns Railway Company which likewise involved the 'local consent' clause. In that case ⁽¹⁾ the court stated that,

"That provision is simply a limitation of the general powers of the legislature, and in one particular only. It provides, in substance, that the legislature may not grant the right to construct and operate a street railway within a municipality without the consent of the local authorities having control of the streets or highways proposed to be occupied. That section of the constitution does not, by implication or otherwise, attempt to divest the state of its paramount authority and control of the streets and highways."

The constitution merely says that the city has power to determine whether street railways shall be operated upon the streets, and if so, upon what streets. To this extent, and no further, the constitution has committed to the city the control of the operation of the street railways in its streets. ⁽²⁾

Summarizing, then, the question of local consent it would seem that the intent of this clause is to protect the city from state interference, but the recent cases ⁽³⁾ lay down the rule that article 11, section 4, merely gives the city power to consent to the location of tracks; in short, the power of the municipality in this respect is a negative one.

(1) 275 Ill 555. see Chicago and Southern Traction Co. 246 Ill 146, Venner v Chicago City Railway Co. 236 Ill 349, 258 Ill 523.

(2) People v Chicago, 270 Ill 188.

(3) 275 Ill 55, advance opinion, Chicago v O'Connell, supra.

3. It should be noted that the right to construct comes from the state as a franchise while the power to consent belongs to the municipality as a constitutional right. In Blair v Chicago,⁽¹⁾ involving the right of a street railway to occupy certain street in the city of Chicago under a ninety-nine year grant, the United States Supreme Court ruled that the right to contract comes from the state as a franchise, and that the power of the city consisted, merely of the right to designate the street to be occupied by the tracks of the company. Moreover, there is a valid contract produced when the conditions imposed in the grant are accepted by the company. Wherein, then, does the city gain positive power to grant licenses empowering public utility corporations to use the streets? Among the numerous powers delegated to the Illinois municipalities by the Cities and Villages act of 1872 are five of marked interest to this study. The city council is empowered under this act,⁽²⁾

"to lay out streets, alleys, and public ways,"

"to provide for lighting the same."

"to alter, extend, and improve the same."

"to regulate the use of the same."

"to permit, regulate, or prohibit the locating, constructing or laying the track of any horse railway in any street, alley, or public place, such not to be over twenty years."

By the Horse and Dummy act of 1899 cities were specifically given the power to consent to the location of any street railway to be operated in its streets, provided there was ten days public notice of the intent to grant such a permit. Consent was not to be for a longer period of time than twenty years.

4. Among the limitations respecting municipal grants is section 90 of the Cities and Villages act of 1872 which provides,⁽³⁾

(1) 201 U.S. 400.

(2) Hurd, Revised Statutes of Ill., 1913 edit. chap. 24, pp. 270-271.

(3) Municipal Laws of Illinois, revised 1902, p. 30.

"That the city council shall have no power to grant the use of of the streets to any railroad, steam, cable, electric or horse except on petition of the owners of land representing one-half of the frontage of the street sought to be used for such purposes."

In an action of debt in *Doane v Chicago City Railway Company*⁽¹⁾ the street railway needed Doane's consent to build and the question was raised whether his consent could be purchased. The court on this phase said that it could not, such action being against public benefit. The streets are vested in the city for public use and benefit, and the consent of one-half of the abutting owners of land is evidence, though not the only evidence, that the construction of said railway is for a public benefit. Moreover, such evidence must be honestly and fairly given, not purchased.

In another Illinois case,⁽²⁾ the court held that an aggrieved abuttor might restrain by injunction the use of the streets by an electric company acting under an ordinance which was invalid, because it was passed without the consent of one-half of the abutting owners of property.

5. By an act passed in 1899 the state legislature prohibited a street railway from constructing its road along any street in a municipality or along any highway without the municipality without the consent of the corporate authorities of the city or county respectively. Other provisions are that the corporate authorities (city or county) be not permitted to grant licenses for a

(1) 160 Ill 22.

(2) *Beeson v Chicago*, 75 F.883.

longer time than twenty years, or without ten days public notice. This provision as to notice was upheld in Metropolitan City Railway Company v Chicago and W.D. Railroad Company⁽¹⁾ where the city sought a bill in chancery to restrain the railroad from acting. The court ruled that because the evidence showed that notice was not given as prescribed by the terms of the act, the ordinance granting the franchise was invalid.

The limitations on the company in respect to the giving of notice and securing the consent of the abutting property owners before a proposed line may be constructed are measures of protection to that class of people in the city who are most intimately concerned with the use of the streets before their property. It is only just that this class have protection where their rights and privileges are concerned to a high degree.

6. With respect to the power of eminent domain the public service companies possess such privileges by the following,

"Any company incorporated in the state may construct its road over any street, road, or across any water in this state, and to this purpose may enter upon and appropriate any property necessary for construction, operation and maintenance of its road, provided its motive power shall not be steam."⁽²⁾

Condemnation proceedings are necessary before the construction and operation of any road where private property is taken. Moreover, owners of private property must be compensated by the methods usually prescribed. However, condemnation proceedings must

(1) 87 Ill 317.

(2) Hurd, Revised Statutes, p. 2610.

be proved to be essential to the construction of the road. In Dewey v Milwaukee Electric Railway Company⁽¹⁾ the railroad wished to condemn a portion of Dewey's land for building purposes. Appellant contended that such land was not necessary to the construction of the road. On the evidence presented the court upheld the contention of Dewey, saying that the railroad did not give sufficient reason for leaving the street and seeking to condemn the property of Dewey. Therefore, one may say that the power of eminent domain vested in a street railway cannot be utilized where such proceedings are not actually necessary to the construction of the railroad.

7.. Inasmuch as several of the cities, whose grants will be studied in detail in later chapters, are under the commission form of government, it will be well to note the few provisions regarding the granting of licenses to public utility companies set forth in the Commission Form of Government Law of 1910.⁽²⁾

"Every ordinance granting franchises to use the city streets shall be on file in final form for public inspection for one week before final passage.

Every grant of a franchise to use the city streets for street railway, gas and electric lights, telephone and telegraph purposes must be authorized or approved by a majority of the electors voting thereon at a general or special election.

(1) 184 Ill 424.

(2) Jones and Addington, Annotated Statutes of Illinois, p. 1165. Beyond the assertion that this law is constitutional and that cities may exercise their delegated powers thereunder no court decisions are available, see People v Edmonds, 252 Ill 108. It should be noted that in all state laws where the term 'franchise' is used it is used in the popular sense, but signifies 'license'

"If passed by the city council in proceedings relating to the initiative it must also be approved by a majority of the electors voting thereon."

8. A brief mention of the Municipal Ownership Law of 1913⁽¹⁾ is necessary to illustrate the final means by which licenses may be acquired or granted. The essential conditions of the law are,

"A city may own, acquire, construct and operate any public utility where the major portion or the entire product is to be used by the citizens and may contract to supply to private owners the products of such utilities.

Cities may lease such utilities to any corporation, provided such lease be not over twenty years.

Before acquiring or constructing a public utility the city council shall draft an ordinance which must be submitted and be approved by a majority of the electors voting thereon. Such ordinance shall provide for the issuance of bonds and mortgage certificates for purposes of acquisition."

Thus far the means by which licenses are granted have been considered as well as the scope and extent of the power of the state and the municipality over public service companies using the highways. It is now essential to discover to what extent regulation of public utilities is possible. To this end it is hoped that a survey of a few cases will describe, as well as delimit, the regulatory powers exercised by Illinois cities.

B. Considerations affecting the problem of public utility regulation.

1. The case of *Munn v Illinois*⁽²⁾ lays down the rule that a

(1) Norton, Illinois Public Utility Law Annotated.

(2) 94 U.S. 113.

grant to a public service business is subject to governmental regulation. In short, the power to grant a license includes the power to impose such conditions and regulations as to the use of the streets as are calculated to accomplish the purposes of government. The case of Bloomington and Normal Railway, Electric and Heating Company v Bloomington⁽¹⁾ involved this issue. Here the city brought an action of assumpsit to recover a license fee of \$25.00 per car. The court ruled that the ordinance imposing this tax was placed upon an occupation carried on as a privilege, and not as a right; and, therefore, this tax was within the power of the city to levy.

2. In another case⁽²⁾ it was asserted by the court that an ordinance within the delegated power of the city would be presumed to be reasonable. The city had taxed this company \$1.00 per pole as a license fee for the use of the streets. As back compensation for one hundred and sixty poles the city brought an action to recover \$640.00. The company set up the claim that this tax was unconstitutional; alleging that it was an interference with interstate commerce, that it was a tax upon interstate commerce, and that it deprived them of property without due process of law. The court ruled, however, that the city could regulate the use of its streets under the powers delegated to it by the Cities and Villages Act, as well as under the specific powers given to it in its charter from the state. Therefore, an ordinance imposing a fee for the use of the city streets was within the power of the

(1) 123 Ill App 639.

(2) Springfield v Postal Telegraph Cable Company, 164 Ill App 276.

city, and being within the delegated power of the city, it must be presumed to be reasonable.

3. The next important principle, far reaching in its scope, is that cities may regulate in detail rates to be charged, as well as service to be rendered by the street railway companies; ie, as to rates of fare, free service, transfers, heating and ventilating of cars, installation of modern safety appliances, as air brakes, joint use of tracks etc. Under section 42 of the Cities and Villages Act the city council is empowered,

"to regulate, tax and license hackmen, draymen, omnibus drivers, carters, porters, expressmen, and all others pursuing like occupations and to prescribe their compensation." (1)

In the case of Chicago Union Traction Company v Chicago⁽²⁾ it appeared that the street railway in question had been operating in Chicago, and had refused transfers to its passengers. Against the contention of the city that it could regulate the business of the company under the clause above, the company set up the claim that its business was not within the meaning of section 42 and, therefore, the city could not compel it to issue transfers to its patrons. The court in making its decision applied the rule of 'ejusdem generis' so as to interpret the clause 'and all others pursuing like occupations' to include street railways. For that reason, the city was within its jurisdiction in compelling the company to issue transfers.

Speaking broadly, then, the city has considerable power with

(1) Hurd, Revised Statutes, chap. 24. p. 272.

(2) 199 Ill 484, 515.

respect to regulating and prescribing measures designed to protect the interests of the public. 1.The power to grant a license has been held to include the power to impose such conditions and regulations with respect to the use of the streets as may serve to aid and protect public rights in the highways, 2.An ordinance of a municipality taxing a public service company for the use of the streets,being within the delegated powers of the city,must be presumed to be reasonable, 3.By a specific delegation of power to the city to regulate all agencies engaged in urban transportation,the city may prescribe in the license to such an agency numerous details with respect to rates and standards of service designed to protect the patrons of the road.

4a. It is,also,desirable to sketch in brief the police power of the city as applied to the control of its streets.The legislature in 1899 provided that every grant of the right to use the streets of the city should be subject to the right of the proper authorities to control the use,improvement and repair of such streets,as if the grant had not been made.It is,also,stipulated that the city may make the necessary police regulations whether that right is reserved in the license or not.⁽¹⁾

To revert to the case of Chicago v O'Connell⁽²⁾ which asserted the supremacy of an order of the State Public Utilities Commission over a clause of the 1907 Street Railway Ordinances of Chicago having to do with the use of 'trailers';the entire question

(1) Hurd, Revised Statutes, 1913, chap. 131, p. 2611.
see Blair v Chicago, 201 U.S. 400.

(2) see p.6.

of the police power was considered and disposed of as follows. The city of Chicago claimed that because it had expressly reserved in the contract agreements of 1907⁽¹⁾ a definite measure of police regulation in regard to the operation of the street railways within its jurisdiction, that the State Commission could not, by any regulation supersede the authority of the city, especially where, as in this case, the order of Commission constituted a direct violation of the regulations set forth in the contract ordinances of 1907. The court, in the course of its opinion, flatly denied this and practically superseded the police power of the city, at least as far as its exercise affects public safety, welfare or convenience, because such functions have been expressly transferred by the Public Utility Law of 1913 to the Commission created to carry that law into effect.

The courts said,

"The police power may be exercised by the legislature directly, or it may be exercised indirectly by conferring the power upon agencies created by the legislature. The power is an attribute of sovereignty and is primarily vested in the

- (1) quoting sections 35, Chicago City Company's ordinance and 37 Chicago Railways Company's ordinance.

35. "Nothing in this ordinance contained shall be construed as depriving the City of the right of exercising any police power which it would have possessed or enjoyed had not this ordinance been granted."

37. "The enumeration herein of special requirements and specific regulations shall not be taken or held to imply the relinquishment by the said City of its power to make other requirements or regulations, and the said City hereby expressly reserves the right to make all regulations which may be necessary to secure in the most ample manner the safety, welfare and accommodation of the public.... and the right to make and enforce all such regulations as shall be reasonably necessary to secure adequate and sufficient street railway accommodations for the people and insure their comfort and convenience."

"legislature which has the right to recall it at any time from the agency to which it has been delegated and after being recalled to retain it or to confer it upon some other agency of government."⁽¹⁾

Moreover, the courts said,

"The police power may be exercised in a variety of ways in the regulation of street car traffic for the public safety and convenience, such as to provide against the over-crowding of cars, compelling proper seating facilities.....and any other matter which shall promote the public safety, comfort or convenience."⁽²⁾

The court disposed of the appellees' contention that the 1907 ordinances were binding contracts and hence that an order of the State Commission, even as an act of police power, was invalid as impairing the obligation of contract, thus,⁽³⁾

"Appellees' contention is undoubtedly sound so far as the contracts relate to matters which do not affect the public safety, welfare, comfort or convenience. Thus, the grant of the right to construct and operate street railways in the city, the agreement to divide the net receipts between the railway companies and the city.....are all matters which do not concern the public safety, welfare, comfort or convenience, because it is immaterial to the public what person or corporation operates the street railways or what disposition is made of the profits, and over these matters neither the State

(1) p.9 of advance opinion, Chicago v O'Connell (see Durand v Dyson, 271 Ill 282.

(2) *ibid*, p.10.

(3) *ibid*, p.11. (The author would dispute the statement of the court in this excerpt that 'it is immaterial to the public what person or corporation operates the street railways'. In my opinion it is very material.)

"nor the State Public Utilities Commission has any control by virtue of the police power."

But in regard to the amelioration of poor service conditions in the city of Chicago which the order of September 29th, 1915 was designed to remedy the court said,

"In so far as the order conflicts with the ordinances concerning such matters the order of the Commission supersedes and sets aside the provisions of the ordinances, but does not, within the meaning of the constitutional prohibition, impair the obligation of any contract, because the city had no power to contract away any of the police power delegated to it by the legislature." (1)

In *Chicago v Union Traction Company* (2) the Illinois Supreme Court asserted that the city as the representative of the state had this power but, quoting *Elliott on Roads and Streets*, (3)

"No contract can be made which assumes to surrender or alienate a strictly governmental power which is required to continue in existence for the welfare of the public. This is particularly true of the police power, for it is incapable of alienation. It cannot be doubted that a company which secures the right to use the streets of a municipal corporation takes it subject to the police power resident in the state as an inalienable attribute of sovereignty." (4)

In *Chicago v People* the court said,

(1) advance opinion, *Chicago v O'Connell*, p. 11.

(2) 199 Ill 259.

(3) p. 801.

(4) advance opinion, *Chicago v O'Connell*, p. 12.

"It is true that a municipality cannot contract away the right to exercise the police power to secure and protect the morals, safety, health, order, comfort, or welfare of the public nor limit nor restrain by any agreement the full exercise of that power." (1)

Sumarizing, it may be said that the city cannot exhaust the police power of the state and that it cannot, by means of an agreement, barter away or alienate the paramount authority of the state to regulate those conditions designed to promote the welfare, comfort, order and convenience of the people. (2) The fact that the grants are general or even comprehensive in scope is immaterial, for in neither case is the state prevented from asserting its authority, either directly by legislative act or indirectly thru an order of a state agent, in the case the State Public Utility Commission.

4b. The next point to be set forth is that the use of the public highways permitted to public utilities is not exclusive. In Russell v Chicago Metropolitan Electric Railway Company (3) Russell was upheld in this principle when he filed a bill for an injunction against the the railroad constructing tracks before complainants' house. A further limitation upon public service compa-

(1) advance opinion, Chicago v O'Connell, p.12.

(2) "If the city of Chicago, in entering into the contracts with the railway companies, has seen fit to make its option to purchase the street railway system, or its right to a certain portion of the net receipts derived from the operation of the system, or any other rights reserved to it by the ordinances, dependent upon the non-exercise of the police power by the State, it cannot be heard to complain that by the exercise of the police power by the State, through the State Public Utilities Commission, it will lose its rights to those benefits reserved to it by the ordinances." quoted from p.11. Chicago v O'Connell.

(3) 205 Ill 155.

nies was asserted in General Electric Company v Chicago City Railway.⁽¹⁾ Here the City Railway Company asked the court to restrain the General Electric Company from laying its tracks in certain streets contending that the fact that its tracks were already in those streets constituted valuable property rights which were entitled to protection. The court, on this point, agreed with the company that its tracks were entitled to a certain amount of protection. Nevertheless, the company could not claim exclusive rights in the streets. Continuing the court went on to state, that where two companies were given privileges or rights in the same streets, the respective companies must place their rails, not only with respect to the non-interference with the rights of the rival company, but also with respect to the rights of public convenience.

5. With regard to regulation under the Commission Form of Government Law of 1910 there is the general provision that the company shall give uniform service to all citizens without discrimination, any favoritism to one class being sufficient ground for the institution of proceedings looking to the revocation of the grant of the company. There is also a prohibition on city officers or officials being interested in any way in any public service company seeking privileges in the community. By section 53 of the law⁽²⁾ the commissioners of the city are empowered to regulate and perform such acts as are necessary to carry out the provisions of this act.

6. As the final means by which regulatory powers are manifested, one should note the provisions of the Illinois Public Utility Law of

(1) 66 Ill App 362.

(2) Jones and Addington, Illinois Statutes Annotated, p. 1165.

1913. The few years that the Commission has been regulating these matters does not enable one to state, with any great degree of accuracy, how broad these powers are. The recent case of Chicago v O'Connell, however, seems to establish the right of the Commission to exercise very sweeping powers over service, extensions etc. Excerpts from the important power of the Commission will aid in illustrating the powers of this board.⁽¹⁾ The scope of the work of the Commission is indicated thus,

"The commission shall have general supervision of all public utilities, shall inquire into the management of the business thereof, and shall keep itself informed as to the manner and method in which business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipments and other property owned, operated, leased and controlled are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and any other law, with the orders of the commission, and with the charter and franchise requirements."⁽²⁾

In section 27 of the law the public utilities,

"unless with the consent of the commissioners, are prohibited from acquiring or controlling by any means direct or indirect the franchises, licenses, permits, equipments, plants of another public utility."

Each utility is also prohibited from,

(1), Norton, Illinois Public Utility Law Annotated.

(2) ibid, p.6, line 8.

"assigning, transferring, selling or otherwise disposing of its franchises, permits, etc.....except such tangible personal property which is not a necessary unit in its performance of duties to the public."

The act further provides that these utilities,

"shall not by any means, direct or indirect, merge or consolidate its franchises."

Succeeding sections provide for the methods of procedure in securing the consent of the Commission to the above acts. One in particular provides,

"Every assignment, lease, sale, or other disposition of the whole or any part of a franchise, license, permit, or other public property of any public utility shall, if made otherwise than in accordance with the order of the commission, be void."

Section 28 provides,

"No corporation not incorporated under the laws of this state shall be granted a franchise except such companies as are engaged in interstate commerce."

Further control is evidenced by section 29 which forbids the transfer of franchises or the making of contracts affecting franchises unless such a transfer shall have been approved by the commission. Another clause is,

"Such permission shall not be construed to revive or validate any lapsed or invalid franchises, licenses, permits or rights to enlarge or add to the powers and privileges contained in the grant of any franchise, permit, or right to waive any forfeiture."⁽¹⁾

(1) Norton, p.25.

Finally section 21 forbids the capitalization of any franchise, license or permit whatsoever or the right to own and enjoy such franchise in excess of the amount(exclusive of any tax or annual charge)actually paid the state or to a political subdivision as a consideration of the franchise.

A survey of the cases dealing with the specific means by which utilities are regulated and controlled would show that together with the detailed measures looking to the protection of the public, there is a large field of municipal police power. The examination of the various street railway grants to be discussed in succeeding chapters illustrates the principle that a city may pass any ordinances or resolutions necessary to the health and safety of its citizens, but subject, as we have seen in *Chicago v O'Connell*, to future regulation by the State Public Utility Commission in those matter affecting public health, welfare, comfort and convenience. In order that there shall be no misunderstanding as to the power of the city in regard to local regulation, in most cases the grants specifically delegates such power to the municipality. There is, then, some police power remaining to the city, but judging it practically, it has been utilized by most cities to a slight degree. As to the future police power of the city compared with the same power now vested in the State Commission by the ruling of the Supreme Court, it is clearly established that the regulatory power of the city, over those matters delegated by the Public Utility Law to the State Commission, is subservient at all times to the higher authority of the Commission; in short, the jurisdiction of the city exists only as long as the State Commission does not interfere.

C.Elements involved in the termination of the grant.

In the last general section of this chapter the manner and means by which street railway grants can be terminated will be discussed. It may be asserted as a general rule that while the company complies with the stipulations of the grant, its rights and privileges specified therein cannot be terminated or in any manner revoked; because acceptance and compliance with the terms of the grant produces an inviolable contract within the meaning of the Dartmouth College case. ⁽¹⁾

1. However, when a street railway company fails to comply with the terms of its license the city, where the power is reserved by ordinance, may terminate the grant and notify the company to remove its tracks. This situation arose in *Belleville v Citizen's Horse Railway Company* ⁽²⁾ and the city brought foreclosure proceedings to compel the company to vacate the streets. Both in the lower and in the Supreme Court, the contention of the city was upheld and the company was compelled to remove its tracks.

2. Moreover, a city may revoke a right of way thru its streets before the same has been accepted and the conditions of the grant have been fulfilled. The case of *East Saint Louis Railway Company v East Saint Louis* ⁽³⁾ involved an injunction gotten out by the city to enjoin the defendant railway company from laying down tracks on Front Street in the plaintiff city. On a writ of error it was decided that the city was within its rights, for the company had not accepted the grant, hence there was no existing con-

(1) 4 Wheaton 694.
(2) 152 Ill 177.
(3) 39 Ill App 398.

tract right.

3. Cooley, a learned authority on the subject of municipal corporations, goes further and asserts that before the work has been done to construct and to put into operation a public utility the state may even repeal the law authorizing the municipality to make such a grant.⁽¹⁾ In *Trustees of School v Tatman*, a very early Illinois case,⁽²⁾ this principle was upheld. Here the school trustees filed a bill to recover an alleged difference in the value of school lands sold by the town to Tatman for ferry purposes by virtue of legislative act of 1833. The trustees asked that the bill be declared void on the ground that the legislature was without the power to enact such a bill. The court ruled that the legislature by this act had not diverted property of the town, but simply directed the sale of land, and that the town had no rights in a ferry not subject to the control of the legislature. Even if the franchise had been granted it was permissible for the state to revoke it. However, in regard to private property Cooley says,⁽³⁾

"these franchises as soon as the works are completed become valid contracts, protected by the rule in the *Dartmouth College* case, and no law can be passed by the state to impair the obligation of a contract,"

Summarizing the conditions under which street railway grants may be terminated one may say: Before a company secures rights in the streets by the fulfillment of certain specified conditions and obligations in the grant, the right of the city to revoke

(1) Cooley, *Handbook on Municipal Corporations*, p. 96.

(2) 13 Ill 28, 30.

(3) Cooley, *Handbook on Municipal Corporations*, p. 96.

may be exercised whether expressly conferred or not, on the ground that there exists no valid contract. However, after the public utility seeking privileges from the city has complied with the conditions and obligations specified in the license from the municipality, the latter may not revoke except when the company ceases to fulfill its contractual obligations; moreover, the power so to revoke must be expressly reserved in the grant.

Chapter II.

General Character of the Grant.

The opening paragraphs of a street railway ordinance include a statement to the effect that the company has complied with the legal preliminaries. This is followed by the enacting clause containing the general grant and an enumeration of the privileges sought by the company. The common form for this is a recital that the stipulations in respect to notice, frontage consents and publication of the proposed ordinance have been observed. An Elgin ordinance prescribes,

"Whereas, The Elgin City Railway Company has heretofore duly presented its petition to the City Council for consent and permission to construct, maintain and operate a street railway upon Melrose Avenue to the south end of Melrose Avenue, and has given ten days previous public notice of the time and place of the presentation of such petition, by publication in the Elgin Daily Courier, a newspaper published in said City of Elgin, and

Whereas, The owner of all land fronting upon said Melrose Avenue has consented and petitioned in writing that the City Council grant to said Elgin City Railway Company the consent and permission as prayed in its said petition.

Now, Therefore, Be it ordained by the City Council of the City of Elgin:

" In consideration of the premises and of the acceptance and undertaking of the Elgin City Railway Company, to comply with the provisions hereof, consent, permission, right and authority are hereby granted to said Elgin City Railway Company, its successors and assigns, to lay down, construct, maintain and operate.....a single or double track railway, with all necessary and convenient turnouts, turntables, sidetracks, curves and switches, appliances and apparatus in, upon, along, and overetc."⁽¹⁾

Following the general grant of power to build the desired street railway, there is a specific enumeration of the streets over or upon which the company shall construct and operate its lines. Each and every grant examined makes provision for the time and manner in which the ordinance shall go into effect, either by a stipulation that the company must accept the license by filing a written statement to that effect within a specified time after the passage and approval of the same by the city, or that it shall take effect so many days or months after its legal passage, without any mention as to obligation on the part of the company to accept the grant formally. The former requirement is much better, for it is additional evidence of good faith on the part of the company that is seeking privileges in the streets. Of course, under Illinois law a grant or a license to a street railway by the city to occupy the streets cannot become a contract until the company accepts and complies with the obligations imposed upon it with respect to the measures designed to promote the construc-

(1) Elgin, Revised Ordinances, 1907, p. 612. (similar provisions are found in every grant examined.)

tion and operation of the road within a specified time.

Most of the licenses in Illinois cities are granted for the definite term of twenty years. As exceptions to this rule one must note that grants to interurban companies are usually for a much longer period, for example, fifty years. It must, also, be noted that in the various consolidations of the many original and separate street railways in a given community into one operating company many of the grants given for twenty years have been extended by subsequent licenses. Such cities as Elgin, Springfield and Joliet have at present but one street railway system. The existing company in each of the cities mentioned has acquired all of the street railway lines in the city, and after so doing, has secured a general extension for a definite term of years. (1)

In regard to the length of the terms, there is no uniformity either in the time that a grant may run or when such a grant begins and expires. About one-half of the ordinances under consideration limit the term to twenty years, seventeen contain no provision as to the length of the grant, some stipulate that the ordinance shall be in force after its legal passage and approval or after its acceptance by the company, a few prescribe that the grants shall continue in force for the full time allowed by the laws of the state of Illinois and the remainder are for a longer period of time than twenty years. However, it must be noted that

- (1) see Elgin, Revised Ordinances, p. 623. Joliet, Special Ordinances, no. 2559. (Unification of street railways is illustrated thus: The Elgin, Aurora and Chicago Railroad controls the street railways in Elgin, Aurora, Joliet, Belvidere and Carpentersville. The Illinois Traction System controls street railways in Urbana, Champaign, Decatur, Bloomington and Quincy.)

the Illinois statutes definitely prohibit the granting of any street railway privileges in the streets for a longer period than twenty years. (1) Twenty-seven of the thirty -nine grants that do not comply with this limitation are operated by interurban companies. (2) Because of the fact that such agencies of transportation are classed as railroads and not as street railways, a grant for a longer period of time than twenty years to this type of carriers is valid. In regard to the rest of the licenses for periods longer than this limitation it is impossible to discover whether such a grant is legal. It would seem that the law has been violated, but one cannot say definitely. (3) It is, certain, however, that several cities in Illinois are bound to grants that will not expire for many years to come.

To say, with any degree of accuracy, what the length of a license should be in these Illinois cities, is impossible. There are three types of grants that may be utilized. 1. the perpetual grant. 2. the indeterminate grant. 3. the limited grant. None of the cities in question have perpetual licenses, so that type does not concern this study. In passing, one should say, that that type of a grant is bad and has no recommendations from the standpoint of public welfare. The indeterminate grant is not so easy to commend or condemn. Dr. Dēlos F. Wilcox, in his discussion of a model franchise, recommends it as the most feasible method of controlling the street railway company. For use in Illinois municipali-

(1) Hurd, Revised Statutes, 1913, ch. 131, p. 2611; art. 5, p. 305.

(2) The following cities under review have one or more grants to street railway companies for periods longer than twenty years. (Danville, Streator, Joliet, Rockford, Rock Island, Elgin.

(3) Each city has accepted the Cities and Villages act which contains the twenty year limitation, but it is possible that these twelve companies have railroad charters or some other special dispensation. This the author has been unable to discover.

ties it is subject to criticism in two respects, 1. the wise administration of an indeterminate license presupposes effective regulation at all times by a supervisory municipal body. The grants under review makes no provision for this continual regulation by a public body, except in the case of the city of Evanston. While the authority of the State Public Utility Commission to regulate public service corporations has been sustained by the Supreme Court, the Commission is in its infancy and has taken jurisdiction in few instances that relate to this study. Thus, in practice, an indeterminate grant is liable to be a perpetual one. In regard to any specific length that a license should run, it is rather difficult to determine. Several elements materially affect this point, 1. the length of the term must be sufficient to attract capital, and to enable those investing capital to secure an adequate return on their investment. 2. On the other hand, the term must be short enough to permit the city to regulate the service and rates to be rendered with respect to the changing conditions of the community. In practice, at least, it should be recognized that a license to occupy the streets is virtually a perpetual grant, if the company complies with the reasonable demands of the city. Therefore, the grant should be framed with respect to the measures that will enable the city to regulate the service and rates rendered by the company, from time to time, but with an equal recognition of the property rights of the public servant involved. Investigation by experts in 1904 showed that twenty-one years was the

maximum length of time that a franchise should be valid.⁽¹⁾ This term seems sufficiently long to meet all interests. It might be controlled to a greater extent, as far as the rights of the public in the cities under consideration are concerned, by provision that service standards and rates should be revised every five years, and also by a prohibition that no extension of the term of the grant could be secured until within one year of the expiration of the licenses. Grants for thirty years and even for fifty years to interurban companies are proper, if the police power of the city with respect to regulation is definitely mentioned and reserved to the city.

(2)

Summarizing table no 1. in regard to the dates when the existing licenses in the cities of Illinois considered in this paper expire, one finds that 68 grants are to expire in the next decade, ending in 1936. This is nearly one-half of the entire number. Also the following ten years will render void rights of 33 additional grants.⁽³⁾

Because of this fact, it is important that the cities in question take advantage of this coming opportunity to secure more advantageous terms with the companies seeking renewals of their existing licenses. The greatest difficulty to be encountered in any constructive franchise policy is the fact that the grants in the various cities under review expire at different times, hence, making any real unification of the terms and conditions affecting public welfare well nigh impossible to secure. Wilcox says on this,

(1) Wilcox, Municipal Franchises, vol. 2, p. 699 (see report of the Municipal Program Committee. This definite time limit is omitted, however, in the report on the Home Rule Charter, 1915)

(2) see appendix.

(3) see Table 3, appendix for dates of expiration, city by city.

"If street railway franchises are to expire at fixed periods at all, it is clear that the franchises for all lines should come to an end at the same time in order that the city may at their expiration be in a position to deal with the street railway problem as a whole, as its nature requires." (1)

In respect to the matter of renewals there are no provisions found in the licenses under review nor any provisions designed to give the company any rights in the streets once their licenses to occupy the same have expired. However, it may be said that in practice an extension usually renews the privileges of the company and guarantees to them the rights of the original licenses so far as they are not specifically changed.

Ten of the fifteen Illinois cities ⁽²⁾ that have been considered in this study make definite provision for terminating the privileges of the grant. The terms and conditions that permit forfeiture are many and varied. The most common are: 1. failure to commence to construct the proposed road or to complete the same within a specified time, 2. a failure to accept formally and file a bond when that condition is required, 3. failure to comply with the demands of the local authorities in respect to local or permanent improvements, and 4. the positive power of the city to take over the street railway for purposes of municipal operation or with the added prerogative of leasing the line so acquired to another company. A glance at some of the licenses illustrate the above conditions in the matter of terminating the license.

(1) Wilcox, Municipal Franchises, vol. 2, pp. 36-37.

(2) Provisions for terminating the grant are found in the ordinances of Springfield, Joliet, Danville, Decatur, Quincy, Urbana, Elgin, East St. Louis, Evanston and Streator.

"In case of neglect or unreasonable default of said Henry to comply with any or all of the provisions of this ordinance by him required to be done and performed, then, and in that case, the city of Joliet reserves to itself the right, at its election, to declare the rights and privileges of this ordinance wholly forfeited." (1)

After stipulating that the company shall remove its tracks for purposes of local improvements a Decatur grant says,

"A failure or refusal on the part of the said company to comply with the requirements and provisions of this section of this ordinance, shall have the effect to forfeit all rights of way, privileges and rights granted by this ordinance and in such case, tracks, switches.... may, at the expense of the said company, be immediately removed from all squares, streets etc."..... (2)

"and should said company, its successors and assigns, fail for the period of three months to continue the operation of said cars, in and through the said city of Springfield as herein provided for, after such operation has once begun, then and in that event, all rights herein granted may be declared forfeited by said city, provided the operation of its cars is not stopped by court proceedings or by act of the city....." (3)

A Danville provision stipulates that in case that the company fails to comply with requirements of the grant in regard to rates,

"for a period of thirty consecutive days, then and in that

- (1) Joliet, Revised Ordinances, p. 426.
- (2) Decatur, Laws and Ordinances, 1900, p. 592.
- (3) Springfield, Franchise Code, p. 206.

"event, at the end of such period of thirty days this ordinance, and all rights, privileges and franchises hereby granted to grantee shall become null and void and of no effect whatever."⁽¹⁾

A Decatur ordinance definitely terminates the grant at the end of twenty years unless the city sees fit to extend it by a subsequent ordinance,

"The rights and privileges herein granted shall continue for the term of Twenty Years from the date of final publication of this Ordinance, and at the expiration of said period the Grantee shall peacefully yield possession of every part of every street and public area in said City then occupied by its lines of street railway, and every part thereof, and from thenceforward, shall make no claim of any kind to exercise any right whatever under the grant herein made, or under any corporate right whatever, and any right which might be claimed by the Grantee to hold beyond the said period of time, under the Franchise under which it was operated shall absolutely cease and determine at the expiration of said period, unless by proper and lawful authority of said City of Decatur, said rights and privileges and Franchises shall be continued or granted for other and further periods of time."⁽²⁾

The above serve to illustrate the means by which Illinois cities have made provisions for terminating the rights and privileges of street railway companies. The greatest criticism of this type of provision is, not that it falls short of protecting the rights of the public, but that it is impracticable. It is extremely rare

(1) Danville, Special Ordinances, pp. 348-349.

(2) Decatur, Laws and Ordinances, 1900-1913, pp. 290-291.

that a company loses its privileges, and this remedy of the city is likely to be obtained only after long and expensive litigation. Dr. Delos F. Wilcox in his chapter on "The Elements of a Model Franchise" brings out this point extremely clearly,

"A deal of space is wasted in franchises by elaborate provision for forfeiture. Such provisions are almost always ineffectual and have little practical result except to lead the city and company into endless litigation, if forfeiture is attempted. It is good policy to require that a company shall construct its authorized route within a specified time on penalty of forfeiting its whole franchise, on the theory that the company has obligations as well as privileges. Such a forfeiture provision can be made simple and practically self-executing. The need of a general provision for forfeiture on account of failure to comply with any of the terms of the franchise is materially lessened by the reservation of the city to terminate the grant at any time and take over the property for municipal operation, or to transfer it to another company. Many forfeiture provisions are not worth the paper they are written on, except to throw dust in the eyes of the people. Forfeiture is too drastic a remedy to be applied with success except in perfectly clear and simple cases." (1)

In respect to Illinois cities, the only stipulations that are necessary to an adequate forfeiture clause are, 1. that the company shall construct so much track within a specified time as an evi-

(1) Wilcox, Municipal Franchises, vol. 2. pp. 98-99.

dence of good faith and, 2. that the right shall be specifically reserved to the city to take over the plant for purposes of municipal operation, or in its judgment to transfer such right to operate to another company. The latter clause containing reserved power to the city to acquire the plant is, in effect, an indeterminate grant to the company. It gives the city plenary power to protect its rights and to secure the faithful compliance with the obligations of the contract ordinances.

Chapter III.

Generally Accepted Principles of Regulation.

A. Conditions prior to operation.

The first step necessary to the licensing and construction of a street railway is to secure the consent of the property owners on the streets sought to be used for railway purposes. Among the limitations on the powers of the cities in Illinois is section 90 of article 5 of the Cities and Villages act of 1872.⁽¹⁾ This provides,

"The city council or board of trustees shall have no power to grant the use of the streets to lay down any railroad tracks in any street of the city to any steam, dummy, electric, cable, horse or other railway company.....except on the petition of the owners of land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes, and when the street or part thereof is more than one mile in extent, no petition of land owners shall be valid unless the same shall be signed by owners of land representing more than one-half of the frontage of each mile and of the fraction of a mile, if any in excess of the whole miles measuring from the initial point named in such petition, of such street or part thereof sought to be used for railroad purposes.⁽¹⁾

A survey of the one hundred and forty -four grants in this study shows, however, that the specific clause in regard to the con-

(1) Hurd, Revised Statutes, 1913. p. 309, of chap. 24.

sent of the abutters appears in only fifty-four of the grants.

This may be explained either by the fact that many of the grants are indential in terms, constituting merely extensions on other streets from the original grant, or by the fact that compiled codes of the ordinances examined may not be complete, so that they fail to show the petition of the company seeking privileges in the streets, A sample of such a petition is as follows,

"Whereas, The Decatur Railway and Light Company has petitioned the City Council of the City of Decatur, Illinois to grant to said Decatur Railway and Light Company, a corporation, its successors and assigns, the right to construct, operate and maintain.....etc.

Whereas, The said Decatur Railway and Light Company has given due notice as required by Law of the presentation of said petition....etc and

Whereas, The said Decatur Railway and Light Company has presented to said City Council, a petition signed by the owners of more than one-half of the frontage of the property abutting upon the street hereinafter named and upon each mile and fraction of a mile, asking that said Council grant..etc. ^{"(2)}

The object of such a limitation is to protect the rights of abutting property owners, and the fulfillment of this condition should be insisted upon as the first condition to construction.

As another prerequisite to construction the matter of requiring a permit from the city has been almost entirely neglected. In only five grants is such a stipulation made. One of these provides,

(1) all of the cities examined have this provision except Rockford and Quincy.

(2) Decatur, Ordinances and Resolutions, 1900-1913, p.299.

"Before entering upon any street to do any work a permit shall be obtained therefor from the Street and Alleys Committee, and the work shall be done under the supervision of the Superintendent of Streets, and it shall be the duty of the said Superintendent to see that the terms and conditions of this ordinance are fully carried out and executed in the conduct of said work and the completion thereof".⁽¹⁾

Another clause illustrates the conditions that such a permit should contain,⁽²⁾

"The company before it makes any excavation or in any way interferes with the surface of the street or public way for the purpose of doing any work, shall obtain from the commissioner of public works a permit so to do. The permit shall contain a condition requiring the said company to restore said street to as good condition as found and maintain for one year thereafter; and in every case the company after it has restored such street or way, shall maintain it for one year after such restoration in a condition as safe and as serviceable as it was and would have remained had no such interference or disturbance occurred.

Permits from the city similar to the above, insure that the company has definite instructions as to its obligations, which too often are not mentioned in the grant.⁽³⁾ It should also be noted that a considerable amount of supervision by city officials is essential for the proper protection of the rights of the municipi-

(1) Aurora, Special Ordinance, no. 943, sect. 14.

(2) Evanston, Code, 1915, p. 1047.

(3) Springfield, Decatur, Evanston and Aurora are the only cities making provision in the grants for permits. It may be possible that other cities require some special permit before excavating.

pality. It is expedient to entrust this supervision to some city official, preferably an officer in charge of the streets.

Illinois cities, in general, have inserted more or less elaborate stipulations in the licenses with regard to the time for the commencement and completion of the proposed railway. With regard to the time within which the construction of the road must commence, the usual condition requires that the grantee shall start to build within so many days or months from the date of the ordinance granting the rights and privileges to the company is approved or accepted by the company. As a further limitation the ordinance as a rule contains a declaration that the company shall have the proposed railway completed within a certain number of months from the date of approval of the grant. In some instances the stipulation is included that the grantee shall have so many miles of the road in actual operation at a stated time. Especially is this latter condition found in interurban grants where the city deems that the requiring of a minimum distance at the end of a stated time to be an excellent means to insure that the proposed interurban will be put into operation. Because of the fact that such lines should not be competitors with the local companies for local service, some means must be adopted to insure that the interurban will not compete for this local service. Thus a minimum distance requirement is designed to compel the completion of the interurban right of way as far as the city is interested, i.e. very likely to the city limits. Street railways are excepted from compliance with the condition of completing a specified amount of track, provided the cause of the delay be of a

character entirely beyond the control of the company, as

"Provided, however, that the said company shall be allowed for such loss of time in addition to said....months as may be caused by strikes, inability to procure material, and other unavoidable causes beyond its control." (1)

Again an exception may be noted in the prerogative of the city to extend the time for completion, if in the judgment of the city council such action is necessary. Some of the franchises also provide that the usual penalty for failure to complete shall not be valid over those streets where the company has completed its road and is operating thereon; i.e. the rights of the company shall lapse only where they fail to complete their tracks within the time specified. An East St. Louis ordinance illustrates this exception,

"There can be no forfeiture of such part or parts of said street railway as are actually constructed and in operation within the period aforesaid, and there can be no forfeiture only by action of the City Council of such part or parts as are not constructed and in operation within the period aforesaid." (2)

Speaking broadly, then, it may be said that Illinois cities have provided that the grantee shall be obligated to build the proposed road within the time specified or forfeit the rights in the streets delegated to it by virtue of such license. In this manner have the municipalities under review prevented a possible entrenchment in the streets of 'paper corporations' who lack the means

(1) East St. Louis, Revised Municipal Code, p. 577. (similar provisions are found in each of the cities under review.)

(2) East St. Louis, Revised Municipal Code, p. 577.

and resources with which to construct a street railway, but, nevertheless, secure and hold valuable privileges which any reputable company desiring rights on the former's right of way might have obtain at a prohibitive price.

With regard to the location of tracks, poles, wires, and other appurtenances there are certain types of obligations found in practically all of the grants. Such are provisions that, 1. the track to be laid shall be as near the center of the street as possible. 2. the poles shall be at a certain minimum distance apart except at street intersections where such distance may be shortened. 3. that the wires, if the overhead system of electricity is used, shall be at a specified height above the ground. 4. that the tracks shall conform to the grade of the street. 5. rather elaborate provisions as to the power of the city to supervise the location of tracks and poles. As a rule, it is definitely stated that the city may require certain acts from the company with respect to the road bed, in addition to the regulatory power of the city vested in the Superintendent of Streets or the Street and Alleys Committee or some other public official or committee. The following illustrates as to changes in grade,

"If at any time the City Council shall change the grade already established on any street used or occupied by a track hereunder, said company, its successors or assigns, shall raise or lower at its own expense said track or tracks to conform to said grade, when so notified so to do by the city council or the city engineer, and if it fails to do so when notified,

then the city may raise or lower the track at the expense of of the company, its successors or assigns, and the said company, its successors or assigns, shall pay the cost thereof to the city on demand." (1)

As a further act of municipal control a Decatur ordinance provides, "all poles, wires, fixtures used in and by said railway plant over and along the streets herein mentioned, shall be so placed and maintained by the Grantees as not to interfere with the reasonable and proper use of the streets and public areas." (2)

Finally it should be noted that the city may use the poles of the company 'for any corporate purpose'. Evanston in its elaborate grant to the Evanston Traction Company provides,

"The city shall have the right without payment of compensation therefor, to use the poles of the company to carry signal, telephone, telegraph and electric wires and lamps for municipal purposes." (3)

In comparing the provisions of the ordinances of the cities in Illinois with regard to details of construction of the road-bed one may say that the cities in question, on the whole, have protected themselves as far as securing the construction of a first class system. Details as to grades, types of rails, ties, poles, and other fixtures, gauge of the track, ballasting etc... each have been touched upon to a considerable extent in these licenses. A survey of the clauses in relation to construction re-

(1) Quincy, Revised Ordinances, p. 534.

(2) Decatur, Laws, 1900-1913, p. 283.

(3) Evanston, Code, p. 1029. (Springfield, Joliet, Decatur and Quincy specifically reserve the right to use the poles of the company for corporate purposes. It is possible that other cities could do likewise in pursuance of reserved power to regulate the service of the companies operating in their streets.

veals the fact that there are common stipulations in regard to the manner in which the proposed road shall be built.

For the guage of track every grant stipulates the use of that standard found on street railways as well as steam roads, ie. 4'8 1-2". The type of rail varies with the character of the line to be built, though every grant prescribes, at more or less length, the kind of rail to be used and its minimum weight per yard. In a similar manner provisions for ballasting the track, ⁽¹⁾ designing the poles, planking street intersections and cross walks where the streets are unpaved and paving are inserted in the license. As special conditions some of the grants require the company to widen a street over which a street railway is to be constructed, or to alter or repair and build bridges, culverts and drains. Each city in drafting the conditions with respect to construction, insists that the tracks conform to the grade of the street, in order to admit the safe and easy passage of all vehicles over such streets. ⁽²⁾

As an example of the manner in which the city regulates matters of construction, in addition to the specific details as to types of rails, wires, appurtenances and other fixtures the following is illustrative,

"all of said work shall be done to the satisfaction of the Superintendent of Streets and the Committee on Streets and Alleys, and when the work shall have been completed, the street shall be left in as good condition as before building said railway or the commencement of such repairs. In case the railway fails to comply with these conditions work shall be done

(1) the entire substructure as well as the minimum weight per yard of the rails depends upon the character of the rolling stock to be operated over the road bed. (2) p.47ff.

"by the City and paid for by the railway on demand." (1)

The above constitutes an attempt to portray the existing situation, among Illinois cities, with regard to the conditions essential to controlling effectively the first group of elements involved in the construction and operation of a street railway. Summarizing, one may say that the cities under consideration have protected to a fair degree their rights in respect to the matters of construction. A survey of the grant makes evident the fact that some of the stipulations are to be regarded in the light of standards. Most important of all, a very considerable measure of authority and control is secured by definite provision that all proceedings necessary to maintaining or operating the proposed railway shall be subject to regulation by the city.

B. Standards for maintenance.

An examination of the various licenses reveals the fact that there are certain well defined conditions and requirements that a company must meet in order to maintain the right of way granted unto them by the city. Nearly every license to occupy the streets contains requirements in the matter of paving and repaving the portions of the streets to be used for street railway purposes. The provisions of the Evanston Traction grant, being the most detailed, offer some very excellent conditions in regard to paving,

"the company shall pave, repave and repair the portions of the streets and public ways which it is permitted to occupy

(2 from p.46) provisions that the tracks shall conform to the grade of the street are to be found in grants of all cities considered.

(1) Aurora, no. 943, cl. 13. (Springfield, Joliet, Danville, Decatur, Rock Island and Evanston also provide for this.)

"under this ordinance whenever and as often as the same shall reasonably require paving,repaving or repairing,and whenever ordered to do so by the board of engineers;and shall at all times keep the surface of its paving in a safe and service-able condition.

The provisions of this ordinance regarding paving shall be construed to mean that the company shall in a good and workmanlike manner pave and keep paved a strip of the street or public way two feet greater than that measured between the extreme rails.The materials used in paving shall (unless otherwise required and approved by the council and the board of engineers) be the same as the material with which the adjoining portions of the roadway or street is now or from time to time may hereafter be paved.The paving work shall be done by the city and the company at the same time in order to best serve the interests of both."⁽¹⁾

A somewhat briefer provision is,

"that at any time that said city shall improve Gilbert Street by paving the same,said grantee shall at its own expense and in the same manner pave and improve the right of way hereby granted,which paving shall include the space between the tracks of the said railroad and one foot on the outside of the outside rail.thereof."⁽²⁾

As to how wide the grantee shall be required to pave,one can say with exactly.The width required by cities,in this state,

(1) Evanston,Code,p.1053.

(2) Danville,Special Ordinances,pp.343-344.

varies from one foot to two and one-half feet outside the outermost rails. Some cities word the provision to include the entire width of the right of way as for example, seven feet for a single track road. It should be noted that this standard should be determined from the relative width of the right of way to the width of the highway to be used for railway purposes.

Some of the licenses reveal the details that some cities have prescribed for the kind of paving to be used, as well as the manner in which it shall be laid. After an elaborate enumeration of the various points in regard to the character of the foundation to be used ⁽¹⁾ a Joliet grant goes on to require that there,

"shall be placed a layer of the best quality of hard-burned paving brick, upon their narrow faces, in straight lines across said Marion Avenue and at right angles to the curb line. Said bricks shall be placed close together with all joints broken, and no brick or parts of brick shall be used, except when necessary to break joints.

Bricks shall be of uniform size, of not less than 2 x 4 x 8 and not more than 2 1-2 x 5 x 9 1-2 inches.

Upon the surface of said pavement laid as herein provided for, there shall be spread a covering, at least one inch in thickness, of clean well-screened sand to fill the crevices and interstices in said pavements, and said sand shall be well and thoroughly swept into said crevices and interstices, and a layer of clean, sharp well-screened sand, one-half inch thick, shall be left on top of the finished pavement.

All of the work herein provided for shall be performed in

(1) the substructure is very important for heavy kinds of traffic, and substructure must be adequate to stand the jolting of interurban cars.

" All of the work herein provided for shall be performed in in a thoroughly good and workmanlike manner, and all of the materials to be used in the construction of this improvement to be of a strictly first class quality. (1)

The usual stipulation, however, is that the company shall use material of a similar kind to that used by the city in paving the remainder of the street. Sometimes the grantee is given the option of using the same kind as the city uses, or a special kind designed to withstand the character of the service along that roadbed. For example, experience has demonstrated that asphalt pavement between tracks will not withstand the wear and tear, especially the heavy jolting of interurban cars, so that, in many instances, the city permits the traction company to substitute within their right of way a more suitable kind, such as vitrified brick.

Speaking broadly, it may be said that there is a considerable discretionary authority in the hands of the city, both as to penalties that it may exact and the supervisory powers that may be exercised in the matter of paving and repaving. For example, a Quincy ordinance provides the usual penalty for failure to comply with the paving obligations,

"in case of any neglect of said company to pave or keep in repair the said portion of said streets, the said city shall have the right to do such paving or repaving or repairing at the expense of said company, and if so done, said company shall repay the cost thereof to said city upon demand." (2)

(1) Joliet, Revised Ordinances, 1902, p. 473.

(2) Quincy, Revised Ordinances, p. 550-551.

In some cases an ordinance stipulates that a company, constructing a road where paving has been laid down already and paid for by means of a special assessment on owners of property contiguous to such pavement, shall refund to the abutters the proportionate amount, less depreciation, that the construction of the road will involve in the way of damages to the original pavement, as,

"said company shall refund to the present owners of the property contiguous to such pavement and to the City of Quincy the cost, less depreciation, according to the rate hereinafter stated of paving eight feet thereof along the line of the company's track where a single street railway track is hereafter constructed hereunder.....such cost to be refunded to those entitled thereto within three months from the construction of said tracks in the proportion in which the respective pieces of property contiguous to the pavement and the city respectively paid for such pavements." (1)

Coincident to the obligations of the grants in regard to paving are conditions that the company must comply with, in the matter of maintaining the surface of the street on its right of way. An ordinance to the Decatur Traction and Electric Company stipulates with respect to the maintenance of street surface several interesting things,

"Said company shall, at all times, keep all track or tracks, rails, switches, turnouts, street intersections, and crossings, planking,in good order and repair." (2)

- (1) Quincy, Revised Ordinances, p. 551. (see p. 52 for ff on paving.)
- (2) Decatur, Laws, 1900. pp. 590-591.

"That said company in making improvements or repairs in addition to keeping the pavement in repair between its rails where pavement is laid or exists, shall also, at all times, keep all pavements along which its track is laid in repair, outside of the rails where such pavement becomes defective, through the fault or negligence of said company from any cause whatsoever, on account of such improvement or repairs,"⁽²⁾

To secure compliance with obligations in the matter of keeping the right of way of the grantee in good repair a Danville ordinance provides,

"In all cases of dispute as to the proper condition or repair of any such track, or tracks, the decision of the Mayor, City Engineer and the Committee on Streets and Alleys in said City shall be final and conclusive. In case grantee shall fail to make all repairs of such track or tracks within ten days after written notice shall have been served upon any officer of the grantee, then, the said City of Danville may make such repairs and charge the cost thereof upon the property and the franchise of the grantee."⁽³⁾

One of the old Elgin grants prescribes a fine for failure to fulfill the obligations to keep the right of way in good condition,

"Whenever said Bruce C. Payne shall neglect or fail to comply

- (1) ff. from (1) on p. 51. (every city makes provision in some way that the street railway companies shall fulfill certain paving obligations either by 1. a fine per day per offence, 2. assessment, 3. city to pave and to recover the cost thereof, even by litigation. Furthermore many of the grants provide that a company shall reimburse abutting property owners where the street in which a street railway is to be constructed, is already paved. Ordinances in Danville, Bloomington, Quincy and E. St. Louis are example of this latter statement.
- (2) Decatur, Laws, 1900, p. 592-593. (all cities stipulate maintenance conditions.)⁽³⁾ Danville, Special Ordinances, p. 355.

"with the provisions of section 6 (to maintain tracks in good repair) the street commissaicner shall cause a notice to be served upon the said Bruce C.payne or his agent,requiring the track or part of the track or street to be kept in repair by said Bruce C.Payne mentioned in said notice required by section 6,within five days after the service of such notice.And in case of failure to comply with the requirements of such a notice the said Bruce C.Payne shall forfeit and pay not less than fifty dollars and not more than one hundred dollars for every day that such failure or neglect shall continue after the expiration of said five days."⁽¹⁾

In connection with the matter of maintenance,the company may be required to remove its tracks temporarily for the purpose of street improvements or for a change in the grade of the street. This may be exercised by the city in pursuance of its general reserved power to lay out,regulate and control the use of its streets,

"In case the city of Elgin desires to grade or otherwise improve any street along and upon which such track or any portion thereof may be laid,the street commissioner shall notify the said Bruce C.payne or his agent to remove such portion of railway tracks as may be necessary for the purpose of making such improvements."⁽²⁾

Other elements in the care and maintenance of the streets are found in specific provisions that the grantee shall sprinkle the streets on which it maintains tracks when it is necessary to

(1) Elgin, Revised Ordinances, pp. 596-597.

(2) Elgin, Revised Ordinances, pp. 596-597. (similar provisions are found in the ordinances of Springfield and Decatur.)

lay the dust, and also to remove the ice and snow from its right of way in the winter. A general extension to all of the companies operating in Elgin is careful to state that the extension is subject to certain obligations, among them,

"Throughout the period of twenty years, commencing with the date of the passage of this ordinance, the companies owning and operating the lines of railway constructed under the provisions of this ordinance mentioned in the preamble hereof shall and will during the months of May to November inclusive, when the streets would be dry without so doing, sprinkle all streets or public ways, or parts thereof, for the full distance along which are located any railway track constructed as aforesaid under the provisions of any of the ordinances mentioned in the preamble hereof, from curb to curb twice a day, and in the fire limits four times a day, one side of a street at a time, such sprinkling to be done free of cost to the city, provided that the City of Elgin shall permit such company to obtain the water necessary for such sprinkling, free of cost from the fire hydrants located along or nearest to the streets to be sprinkled. Instead of permitting the use of fire hydrants for such purposes, the city may provide some appliances equally convenient and accessible, and further to so dispose of and distribute snow as to leave all crossing open for traffic, and in such manner as not to seriously interfere with traffic on said streets." ⁽¹⁾

(1) Elgin, Revised Ordinances, pp. 624-625.

Another grant prescribes the removal of snow thus,

"In removing snow the company shall not deposit upon the portions of the street or public way outside of the track in such manner as to render the street unsafe or impassable for other and usual classes of traffic. The company shall within a reasonable time, after demand by the commissioner of public works, remove from the street the snow (or its equivalent in volume) swept from the tracks. The company shall either furnish or reimburse the city for furnishing labor to shovel footways across streets in which the footways through snow may be blockaded by the sweepers, plows or other devices of the company. The charges to be paid to the city shall be approved by the board of engineers."⁽¹⁾

The clause below seems to cover the maintenance obligations in general,

"The company as regards filling, grading, paving, keeping in repair, sweeping, sprinkling, keeping clean or otherwise improving the portions of the street occupied by its tracks, shall fill, grade, pave, keep in repair, sweep and keep clean and remove the snow from all portions of such streets and public ways to a width of not less than two feet in excess of that included between the outer rails of double tracks, or that included between the rails of single tracks."⁽²⁾

In connection with the question of maintenance the same stipulations in regard to the repair of the rolling stock, and equip-

(1) Evanston, Code, p. 1053.

(2) *ibid*, p. 1052.

(3) The cities of Joliet, Bloomington, East St. Louis, Rock Island, Evanston, Aurora and Rockford stipulate that the company shall sprinkle the streets. Elgin and Rockford, in addition to Evanston prescribe the removal of snow from the streets.

ment are evident, It is the city, at all times, that may determine the necessity of such repairs for keeping the equipment in shape, so that one may conclude that there is a well-defined reserve power in this respect remaining to the municipality. It is significant to note, however, that numerous details may be placed in a grant with any number of specific obligations imposed upon the company, but unless vigilant public officials, especially those officers in charge of the streets, are continually on the watch to secure the full and faithful compliance with these details, resting as obligations upon the companies, such obligations are of no value whatever, as far as protecting the rights of the public. This is much more manifest in the matter of service, but all too often our streets suffer from poor pavements, dust or ice accumulates thereon, because the abatement of such annoyances have been entrusted to a public service agent who aims at the least compliance with its obligations that is possible, and who succeeds in this design thru the negligence of public officials. It must be reiterated that the compliance with standards, that are to the interest of the city and the public at large, must be sought in the ever watchful supervision by the public officers of the city.

Chapter IV.

Principles Governing Service and Rates.

A. Standards essential to operation.

The most important topic from the standpoint of the municipality are the essentials that must be secured in the matter of service. Dr. Delos F. Wilcox, an authority on the subject of franchises, emphasizes the necessity of adequate and continuous service. The first element on the matter of service is the question of the frequency and regularity of cars. Quotations from several of the grants will throw light on the manner in which the cities of Illinois have regulated this important matter.

"Said railway shall be operated at all times for the public convenience, upon schedule time, and cars shall be run over all the tracks as frequently as is customary in other cities of this size, and said running of cars on schedule time shall not be temporarily changed or abandoned, for the purpose of concentrating the cars at any point or any lines for special occasions."⁽¹⁾

"The Joliet Railroad Company, its successors and assigns, shall on and after the date of the completion of the said track, run one car for passenger purposes over the above described route at not to exceed twenty minutes apart, or as often as the city council of the city of Joliet, in the reasonable exercise of the power hereby reserved, so to do, may hereafter by ordinance prescribe, except that in cases of unavoidable ac-

(1) Rockford, Special ordinance to Rockford Railway Light and Power Company, p. 7.

"cidents, or snowstorms and floods the said railroad company, its successors and assigns, shall be allowed to make repairs and clear said tracks, not, however, to exceed five hours, and the making of such repairs and the clearing of such track shall be immediately commenced and prosecuted to completion (1) without interruption."

"The passenger cars of the company, except as herein provided,in said city, shall be operated at intervals of not more than ten minutes, between the hours of five thirty(5.30) a.m. and ten thirty(10.30)p.m., and at intervals of fifteen minutes between the hours of ten thirty(10.30)p.m. and twelve thirty (12.30)a.m.....provided all such schedules may be modified or changed by order of the board of engineers." (2)

The above serve to illustrate the fact that certain of the cities, at least, have definitely reserved power to regulate this vital problem. For effective control it is essential that the regulatory power of the city should be ample. What may be adequate service when the line is first put into operation, may prove to be entirely inadequate at the end of ten or fifteen years. It is evident from practice that the companies will not respond to demands for increased frequency of cars with any more readiness than for similar demands for extensions. It is, therefore, essential that the city possess ample powers over this matter. Of course, it is impossible to stipulate any one standard of frequency, as that will depend upon the size and character of the city, as well as the character

(1) Joliet, Revised Ordinances, p.457.

(2) Evanston, Code, p.1033. (similar provisions in respect to the frequency and regularity of cars are to be found in licenses of the other Illinois cities examined.)

of the population to be transported, and also will vary with the number of passengers carried at different times in the day or night. One omission that the Illinois grants have made in this respect, is the failure to stipulate that the companies shall put on extra cars to meet extra service at the so-called 'rush hours' of the day. Special service must be given at those times in the day when the system is subjected to the greatest load.

A Danville ordinance offers two significant items on another phase,

"That nothing herein contained shall be so construed as to compel said company, its successors or assigns, to run its cars on Sunday against their will."⁽¹⁾

After providing the frequency of cars, said ordinance provides,

"And in case of failure so to do (the company) shall pay a fine of not less than twenty dollars for each offence, provided, Nothing herein contained shall require the payment of such fine when cars cannot be run₍₂₎ by reason of breakdowns, storms, or other unavoidable causes."

With regard to the matter of maximum and minimum speed of cars it is impossible to fix any exact standards except that many of the cities recognize the necessity for requiring different rates of speed in various parts of the city.⁽³⁾ The business district where traffic is congested demands a much lower maximum rate than that in the residential portions of the city.

"That said company, its successors or assigns, are hereby au-

(1) Danville, Special Ordinances, p. 324. (penalty provisions are found also in Decatur and Quincy ordinances.)

(2) *ibid*, p. 324.

(3) Ten of the fifteen cities under review regulate the speed of cars: Danville, Decatur, Quincy, Elgin, East St. Louis, Rock Island, Streator, Bloomington and Champaign.

"thorized to run its cars,for the transporation of passengers, over and along said track at a rate of speed not exceeding fifteen miles per hour.Provided,however,that such speed within the fire limits of said city shall not exceed ten miles per hour."(1)

"The right is hereby reserved to said city of Springfield to make such regulations from time to time hereafter in regard to the speed and manner of running cars operated by said traction company-in said city as the public safety and necessity shall require,and the rights hereby granted to said traction company shall be subject to all general ordinances applying to streets,...etc.(2)

"The city hereby reserves the right to make such regulations as to the speed and time of running cars operated by said grantee herein,its successors or assigns,in said city,as the public safety and necessity demands,from time to time, such regulations to be made by the City Council of said City."(3)

"The speed of said cars shall be limited to ten(10) miles per hourstreets,and fifteen (15) miles per hour on other parts of the line.Any violation of any of the provisions of this section shall subject said Railway Company,its successors or assigns,to a fine of not less than Three (\$3.00)Dollars not more than Fifty (\$50.00) Dollars for each offense,to be collected by suit in the name of the city in any court of

(1) Danville,Special Ordinances,p.323.

(2) Springfield,Franchise Code,p.225.

(3) Decatur,Laws,1900-1913,p.315.

"competent jurisdiction, provided that the City Council may hereafter by ordinance further restrict the speed of street and interurban cars within the city limits."⁽¹⁾

On the question of carrying capacity only two of the grants have made any mention. An Aurora license prescribes that,

"The cars of said company shall have a capacity to seat not less than twenty-four passengers comfortably."⁽²⁾

The Evanston Traction grant does not specify the number of seats to be provided, but prescribes in detail the character of the cars to be used,

"Said cars shall have center aisles, shall be without running boards along the side, and be equipped with sufficient motor capacity. Cross seats facing forward shall be used, but longitudinal seats, each seating four passengers, may be installed at the ends of the cars."⁽³⁾

It would seem desirable that the city insist upon the company furnishing at least enough cars to seat all of the passengers in the non-rush hours and as many more cars during rush hours as possible. Because the companies will meet this need only after pressure, it is essential that power be lodged in a municipal board to secure quick and effective action.

In an examination of the provisions in regard to safety requirements one finds many details. It is likely, however, that safety provisions will be observed by the grantee, for it is on this

(1) Streator, Revised Ordinances, pp. 448 - 449.

(2) Aurora, Special ordinance, no. 943, sect. 7.

(3) Evanston, Code, pp. 1030-1031.

score that many damage suits are brought against public service companies. To forestall this the companies are very careful to operate their cars in a manner that will produce the minimum number of accidents. The following are typical of these safety requirements placed in the grant,

"There shall be placed upon all cars, gongs of proper and sufficient size to warn people of the approach of said cars, for a distance of at least one hundred feet and such gongs or alarms shall be sounded at least one hundred feet before said car approach street intersections, sidewalks and crossings and all other places where it shall be necessary or prudent to cause such alarm to be given, but no whistles of any kind or character shall be sounded. All cars shall be equipped with electric or air brakes. At all railroad crossings where watchmen are not located or other sufficient and proper signals operated to designate the approach of trains or cars on such railroads, all cars used by said company shall stop at least ten(10) feet before passing over any railroad crossing, and the person or persons in charge of said car or train, shall go upon railway crossing and ascertain that no car or train is approaching such crossing and that there is no visible danger in running such car over such railroad crossing." (1)

"and all cars shall be equipped with efficient and serviceable fender devices, headlights and sand boxes. Each double truck car shall be equipped with two sets of brakes, one of which
(1) Springfield, Franchise Code, p. 214.

"shall be a hand brake, and the other an efficient power brake
(1)
of modern, approved type."

"The street car gong or bell shall be rung at all street intersections and the names of all the streets at such intersections shall be called by the conductor; all cars shall be stopped at all railroad crossings, not less than twenty-five feet from the tracks of such railroad, and the conductor shall see that such railroad track is clear. Any conductor or motorman on said car who shall wilfully violate any of the provisions of this section upon conviction shall be fined in any sum not less than three (\$3.00) dollars for each and every offense." (2)

A similar survey of the provisions in regard to health conditions shows that the cities are prescribing standards in respect to heating, lighting, ventilating and cleanliness of the cars to be operated by the public service companies.

"All cars when in use shall be well and properly heated in cold weather, and well and properly lighted at night." (3)

"All passenger cars operated on said railway shall be of the latest and most modern construction, with enclosed platforms or vestibules, and shall be properly lighted, heated and kept in a clean, sanitary condition for the health and comfort of the passengers therein." (4)

"That the said grantee shall furnish for the service of its

- (1) Rockford, special ordinance, p. 7.
- (2) Evanston, Code, p. 1031.
- (3) Springfield, Franchise Code, p. 214.
- (4) Streator, Revised Ordinances, p. 448

"patrons.first class modern cars and equipment;that they shall they shall be heated in cold weather and kept resonably comfortable at all time;that they shall be well lighted within and carry a satisfactory and suitable headlight on the forward end of the car on all trips after dusk and in the night time;each car shall be labelled showing in a clear legible manner the route upon which the cars is traveling,or the district which it serves,that in the night time the labels shall be illuminated so that the car may be known from a distance of not less than seventy-five feet from street intersections. The cars shall be manned by competent men,reasonably well-skilled in the use of electricity to the extent to which it is used by a moterman in the operation of a car."⁽¹⁾

"all passenger cars shall at all times be kept clean and in good repair,and shall be thoroughly ventilated and heated to a temperature of not less than fifty(50) degrees Fahrenheit,as nearly as practicable,and shall be sufficiently illuminated by elctric lights."⁽²⁾

"and such of the cars as are used for the transportation of ^{it} (3) passengers shall be suitably lighted,heated and cleaned at all times when necessary for the comfort and convenience of patrons;and all cars doing a city business to be hereinafter operated within the present or future limits of the City of Aurora shall be equipped with a standard thermometer placed so that passengers may conveniently see the same,which shall

(1) Bloomington and Normal grant,p.8.

(2) Evanston,Code,p.1031.

(3) Aurora,special ordinance,no.1112.sect.11.

"register the temperature of the atmosphere, and each of said cars shall have a temperature of not less than Fifty(50) degrees Fahrenheit between the first of November and the first April of each year. ⁽¹⁾

The above constitute some of the details that municipalities have imposed upon the street railway companies operating within their jurisdiction. The clauses that relate to health and safety requirements may be criticized because they fail to provide a municipal board to see that conditions similar to the above are fulfilled. ⁽²⁾ With the exception of Evanston where a board of engineers has complete and sweeping supervisory powers over the operation of the traction company in that city, one finds few, if any, definite provisions designed to secure the adequate enforcement of these obligations purporting to protect the health and convenience of the patrons of the road. It would seem that all details of service require the supervision of some municipal authority corresponding to the State Public Utility Commission, in order that there is positive power to compel the company to comply with all reasonable demands of the public. It seems much more practicable, and presumably as satisfactory, to give broad powers to a municipal commission than to prescribe in detail the obligations and duties of the company, especially in such petty matters as the requirement for placing a thermometer on the cars where each passenger will be able to see it. In short, the police

(1) Aurora, Special ordinance, no. 1112, sect. 11.

(2) Provisions designed to protect the health and safety of of the patrons of the road are found in the grants of all of the above cities except East St. Louis, Urbana and Champaign.

power of the city over these matters of service ought to be wide, ample and most important of all, steps should be taken to see that it is exercised.

Because of the fact that the facilities in most cities for adequate street car transportation cannot be given except on the main arteries of traffic, it is essential that the city itself keep control of the highways, so that the greatest amount of transportation facilities can be introduced with the minimum amount of obstruction to foot and vehicular traffic. To that end it is necessary, especially in providing the rights of way for inter-urban companies, to have reserved power to require the local lines to permit the joint use of their tracks on the payment of adequate compensation therefor. ⁽¹⁾ The power of the city over this matter is wide, for many of the grants contain rather detailed provisions for the joint use of tracks, even to prescribing in detail the legal steps necessary to determine the compensation for the joint use of tracks. Several of the grants state definitely that the licenses are not exclusive in character, as,

"The right is hereby reserved to the City Council of the said City of Streator, at any time hereafter to grant to any other interurban Traction Company or Companies upon such terms as said City shall see fit to impose as between itself and such other company or companies, the right to operate over the tracks of said Railway Companies....., provided that such other company or companies shall so arrange its or their

(1) This requirement is made by all cities except Elgin and Quincy.

"schedule as not to interfere with the schedule of the Chicago, Ottawa and Peoria Railway Company if said last mentioned schedule shall be consistent with the reasonable joint use of said tracks." (1)

A grant to the Urbana and Champaign Railway, Gas and Electric Light Company is interesting, because it considers an agreement with respect to the joint use of tracks as a contract,

"The said Grantee, its successors and assigns, hereby are authorized to allow and to give by contract to the Danville, Urbana and Champaign Railway Company, its successors and assigns, the right to use and operate its or their railway lines of said Grantee herein authorized under authority given heretofore or hereafter by said City to said Danville, Urbana, and Champaign Railway Company." (2)

A provision is found in the Evanston Traction ordinance that,

"No car of the company shall at any time, without the consent of the city council, be operated on the lines of any other street railway, and no car or cars of any other street railway shall, without the consent of the city council, be operated on, or allowed to use the street railway lines of the company." (3)

Two methods may be utilized for the establishment of equitable terms for the joint use of tracks as,

"1. It is further provided that in case any company operating cars within the City of Aurora shall desire to run its cars

(1) Streator, Revised Ordinances, p. 443.

(2) Urbana, Ordinances, 1916, p. 371.

(3) Evanston, Code, p. 1033.

"upon the tracks of the grantee herein, they shall pay to the grantee an amount per mile for each car operated on said lines of the grantee herein; provided, further, that in case the grantee and any other company desiring to operate cars on said lines of the Aurora, Mendota and Western Railway Company, the same shall be submitted to a Board of Arbitration, the grantee herein to select one arbitrator and the company desiring such privileges to select another, and the two to select a third arbitrator who shall not be interested or a stockholder in any of the lines so represented." ⁽¹⁾

"2. The Bloomington and Normal Railway, Electric and Heating Company shall have the right to use that portion of the railway tracks of said interurban company..... for the purpose of running its cars, together with the electric power necessary to propel said cars, conditioned, however, that the said Bloomington and Normal Railway, Electric and Heating Company shall pay to the said interurban company or its successors a reasonable price for the use of said tracks and electric power, and that in the event that the two said parties cannot agree upon a reasonable price for the same, that then, and in that event, upon the petition of either party, the City Council of Bloomington shall determine the price to be paid for the use of said tracks." ⁽²⁾

To settle with justice to both parties in the controversy what is 'just compensation' is a difficult problem. It would seem that

(1) Aurora, special ordinance, no. 1553, sect. 20.

(2) Bloomington, special ordinance to Bloomington, Peoria and Champaign Company, sect. 12.

any kind of a board of arbitrators is much more qualified to solve the question than the city council. The only right that the city should possess, in this respect, is the power to regulate traffic to conserve it in the best manner for public welfare.

A survey of the various grants in Illinois cities shows that on the question of motive power only one-half of the licenses definitely stipulate what this shall be. On this point, however, there is considerable unanimity of opinion, especially in the definite prohibition of steam power.⁽¹⁾ A great many of the licenses prescribe electricity as the motive power and prohibit the use of any other power without the approval of the city. Some of the older grants passed before the introduction of electricity permit the use of horse or cable power. The essential point in this connection, is that the city have the power to prescribe any kind of power necessary to meet changes and developments in transportation facilities. Thus one grant states that,

"The said Bloomington and Normal Railway, Electric and Heating Company, its successors and assigns, in the operation of the said line or lines if a street railway in said city, may operate the same by electricity as motive power, by the overhead system of distribution, or any other motive power to be first approved by the City Council of said City by ordinance."⁽²⁾

Dr. Delos F. Wilcox, one of the leading authorities on the subject of franchises, says in regard to extensions,⁽³⁾

(1) This is, however, prohibited by state law (clause in relation to grants for longer than twenty years) Hurd, Revised Statutes, p. 2610. Every city has prescribed the motive power in at least one license.

(2) Bloomington and Normal grant, p. 3.

(3) Wilcox, Municipal Franchises, vol. 2, p. 38.

"perhaps the most important of all the obligations that go with the acceptance of a monopoly privilege in the street railway business is the obligation to build extensions."

However, when we glance at the licenses in the cities in Illinois under consideration we find comparatively few specific obligations placed upon the street railways on this topic. In fact, only one-fifth of the grants in question make any stipulations at all with respect to extensions, and a good many of those are simply time extensions or the granting of similar privileges on additional streets. ⁽¹⁾

In order to apply some adequate test in this matter of extensions, as found in this state, it will be well to quote a few of the typical sections of the licenses examined,

"The City Council of the City of Streator reserves and shall possess the right at any time, from time to time, after January 1st, 1900 to order the construction and completion by said party, his successors and assigns, of any new lines then built and operated upon any or all streets in the said City of Streator, upon which sewers have been constructed, streets graded, and other improvements completed to admit the construction of such lines in a substantial manner, and all lines and extensions ordered so shall be constructed and put into operation within one year after such orders are made.

Provided, That no new lines shall be ordered which parallel the lines already constructed within a distance of twelve

(1) All cities except Aurora, Champaign and Danville have provided in some manner for extensions. None of the licenses examined, however, give the city discretion as to where extensions may be ordered not do any of them prescribe a specific number of miles of track shall be built annually.

"(1200) hundred feet, and,

Provided, That said party, his successors and assigns, shall fail or neglect to complete, equip and operate any line which may be ordered by the City Council as stipulated, the right to build, equip and operate through and upon such streets as may have been designated in such order as aforesaid shall constitute a forfeiture of their rights and privileges on that part of said street or streets." (1)

"All ordinances hereafter passed granting to said company the right to make any extension or extensions shall be subject to the terms, provision and conditions of this ordinance and the right, power and authority to maintain and operate such extension or extensions shall terminate at the same time at which the rights herein granted terminate and shall be subject to all terms conditions and provisions hereof." (2)

"And further, that, in the event that a public park for the benefit of the inhabitants of the city of East St. Louis and its suburbs shall be established within two miles of the present limits of said city, within this state, the said Electric Street Railroad Company shall extend its line into said park." (3)

"The said Rockford Railway, Light and Power Company, its successors or assigns, upon acquiring the rights, privileges and franchises of the Rockford Traction Company shall have the right to connect the track or tracks so acquired of the said

(1) Streator, Revised Ordinances, p. 430

(2) Quincy, Revised Ordinances, p. 557.

(3) East St. Louis, Revised Municipal Code, pp. 654-655.

"Rockford Traction Company with its present tracks at such points as shall be necessary for the purpose of establishing one complete system.....but such changes shall be made to the satisfaction of the city of Rockford, and the city council."⁽¹⁾

"All of the franchises in this ordinances, extended and renewed to said Tri-City Railway Company, its vendees, lessees, mortgagees, successors and assigns, shall be subject to all the terms, conditions and supplemental ordinances granting the said franchises.....etc."⁽²⁾

"Nothing in this ordinance contained shall be construed in any manner to extend the franchise of the Urbana and Champaign Railway, Gas and Electric Company."⁽³⁾

In regard to the time when extensions may be required, one finds that, in several instances, it depends upon an act of the city, for example, the permanent improvement of the streets. The most common type of an extension in Illinois municipalities, is an extension to other streets than given in previous grants, or an extension of the time limit in respect to completing the construction of the road. There are few definite provisions that the company shall extend to portions of the city that are in need of street railway service to develop that part of the city. There are not, moreover, any provisions in the grants examined that a certain minimum amount of extensions shall be built yearly. In

(1) Rockford, special ordinance to Rockford Railway Power and Light Company, p.8.

(2) Rock Island, Revised Ordinances, p.544.

(3) Urbana, Ordinances 1916, p.349.

some cases the length of the extension is for the remainder of the original grant. In other cases, and perhaps more often in respect to extensions to other streets than mentioned in the previous license, one finds each and every grant for a prescribed term, ie, twenty years. This latter practice is bad, due to the fact that it ties the hands of the city completely for years to come, for grants expiring at different times makes ineffective control over the entire transportation system when it comes to renewing the expiring licenses. Where the city has the authority to acquire the system for purposes of municipal operation, grants of different terms prevents the city from acquiring the street railway company's plant in toto, which method is the only effective way to enable the city to control the transportation facilities within its jurisdiction.

With respect to the means by which extensions may be required in the outlying districts of the city, there are no stipulations that the company shall provide an extension fund, as is done in some cities in this country, and out of which the cost of constructing new lines shall be taken. It is entirely reasonable to require a company to extend its lines to meet the demands for street railway service in a rapidly growing community, but it must be recognized also, that such extensions will not be 'paying propositions' the first few years after they are built and put into operation. For that reason, the company is naturally slow to construct its road in those parts of the city that are felt by the people dwelling therein to be large enough to warrant

service. In order to render possible the construction of street railways in those sections of the city, some of the larger municipalities of this country have made provision for these extensions out of a special fund, derived from the compensation paid by the utility for the use of the streets. With financing in part, at least, by the municipality of the lines needed in the outlying portions of the city, certain requirements can be imposed upon the street railway companies. In the first place, if the city is to finance the extending of the street railway, the company using such extension or extensions must pay to the city a sum sufficient to cover interest charges, depreciation, and an annual sum to be returned to the extension fund, in order that that fund may be amortized within a stated term of years. In the second place, in a rapidly growing city the company may be required, very reasonably, to build a specified number of miles of track every year, and finally the decision in this matter of extensions should remain at all times in the hands of the municipality.

B. Considerations affecting the problem of rates.

In connection with the problem of rates it is significant that less than one-half of the grants under consideration make any definite stipulation with respect to the rates to be charged, or the requirements for free transfers, free service to municipal officers or for tickets at lower rates than the regular fare. There is, of course, a well established rate, i.e. that five cents may be charged for one continuous ride in one direction. This rate seems to be the prevailing one, not so much because it has ever

been determined that a five cent rate is the rate which will net the company an amount sufficient to yield a reasonable profit on the capitalization of the company, but it is due, in fact, to the convenience of that amount over an odd number of pennies as three, four or six.

A comparison of some of the typical provisions in regard to rates will have some bearing in determining, if possible, the existing situation in Illinois cities,

"Said Henry shall have the right to charge and collect, by fare, for each passenger a sum not exceeding five cents for one continuous ride over the entire line of said railway.....except that after ten o'clock at night he shall have the right to charge for each passenger not to exceed ten cents for each ride."⁽¹⁾

"For a continuous ride in one general direction, within the present or future limits of the city, over its street railways covered by this ordinance and all extensions thereof (whether owned, leased or operated by it) the sum of five cents (5c) for each passenger twelve years of age or over, and three cents (3c) for each passenger under twelve years of age; provided, that a child under seven (7) years of age accompanied by a person paying fare shall be permitted to ride free."⁽²⁾

"Each passenger, for one single five-cent fare, shall be entitled to be transported for one continuous passage in one di-

(1) Joliet, Revised Ordinances, p. 426.

(2) Evanston, Code, p. 1032. (seven years is higher than ordinary exemption for children riding free. Usually five years is the maximum age that children are permitted to ride free of charge.)

"rection, over the lines of any or all of the above mentioned traction corporations, between any two points reached by the present or future lines or either of them, within the territory now included in the present corporate limits of the City of Danville." ⁽¹⁾

"The said company shall not charge to exceed five cents for each passenger for one continuous passage over the line hereby authorized to be constructed and maintained and over every line of electric railway in the city, directly or remotely connected with the same, and owned, controlled or operated by said company..." ⁽²⁾

"It is hereby provided that for one direct continuous passage commencing within the limits of either the City of Urbana, or the City of Champaign and terminating within the limits of either of said Cities, the maximum fare collected by said company shall be five cents; provided that nothing herein shall be construed to passages commencing or terminating without the limits of either of said Cities, or to effect the through traffic of said Company, or its through tariffs or charges for passages other than those having their inception or termination in either of said Cities, or commenced in one of said Cities and terminating in the other." ⁽³⁾

"Passengers entering cars of said Railway Company at any place in said City of Streator, going to any place outside of the

(1) Danville, Special Ordinances, p. 340.

(2) East St. Louis, Revised Municipal Code, p. 606.

(3) Urbana, Ordinances, 1916. p. 360.

"City of Streator, shall not be charged an extra fare on account of the place in the City of Streator where they entered said car...etc"(1)

The above serve to illustrate the fact that there are specific rates and charges, and in some cities a definite classification on the basis of the age of the patrons to be carried. They also serve to show the methods by which cities have regulated rates, limiting the company by such phrases as 'single continuous passage', 'within the present or future limits of said city' and on lines 'owned, leased or operated' by the company. Some of the licenses permit an extra charge after a certain hour at night. In short, one may say that where the city has seen fit to specify at all in respect to rates, they have taken measures to regulate the matter to a real degree.

To enable one to obtain 'one continuous passage' as some of the grants prescribe, it is necessary to specify that transfer privileges to connecting lines shall be given passengers. The Evanston Traction grant is typical in this matter,

"Each passenger may demand, and upon such demand, if made at the time of the payment of fare, shall receive from the conductor of the car upon which he takes passage or from some authorized agent of the company, a transfer, which shall entitle said passenger to ride upon the next car operated upon other intersecting or connecting line of the company's street railway system within the limits of the said city of Evanston, for

(1) Streator, Revised Ordinances, p. 448. (all cities specify in one or more grants the rates to be charged.)

"a continuous ride within said city. The company shall have the right to make and to enforce such reasonable rules and regulations not inconsistent with the provisions of this ordinance, relative to the collection of transfers, their issuance and acceptance as may be necessary for the practical operation of its railways and to prevent the misuse of transfers. The city council reserves the right to require the company, at any time hereafter, to exchange transfers with street railways operating in the city of Chicago, upon equal terms, and for equal distances, and the company hereby assents to such reservation on behalf of the city, and agrees to promptly comply with all of the city in that respect."⁽¹⁾

One sees, then, that the requirement imposed upon the company for transfers is essential to proper service, but the use of such transfers should be subject to regulation by the company. The city may regulate to protect the rights of the public and to insure a uniform rate within the confines of the city, while the company may adopt rules limiting the indiscriminate use of transfers, in order to prevent the patrons abusing that privilege.

In some of the grants under review there are definite provisions for free service to certain types of passengers aside from the employees of the street railway. Many licenses require the companies to carry policemen and firemen in the performance of their duties and in uniform. The United States government makes contracts in some cities with the street railway company to carry

(1) Evanston, Code, pp. 1032-1033. (this is a universal stipulation in the fifteen cities under consideration.)

all letter carriers with their mail bags for a certain sum to be paid annually.⁽¹⁾ In a few cases certain other public officers, as for example, city commissioners or aldermen, are permitted to ride free. In general, it should be said that free service to anyone except employes of the road is a bad practice, although the State Public Utilities Commission have declared it not to be contrary to public practice to carry municipal officers free of charge.⁽³⁾ In practice, carrying aldermen for nothing is liable to influence those public servants in any matters touching the business of street railways. It is somewhat different in case of policemen and firemen who ride in the performance of duty, for it may be necessary for the public safety. If the city must transport its municipal officer and laborers from place to place in their work, it should purchase books of tickets for the persons so carried or allow them a monthly carfare allowance.⁽²⁾

Some of the grants make special rates to persons buying tickets, as for example, six tickets for twenty-five cents, or half fare for school children. The Bloomington and Normal Railway, Electric and Heating Company grant provides for this as follows,

"The Grantee shall sell upon its cars, subject to such reasonable regulations as it may provide, six(6) tickets for transportation fares for twenty-five cents(25c); children under six(6) years of age shall be carried free when accompanied by one regular passenger. And provided further, that the Grant-

- (1) The Rockford Railway Light and Power Company's grant on this prescribes the carriage of letter carriers for a sum not less than one hundred dollars annually. p. 7.
- (2) Provisions for some form of free service are found in the licenses of the following cities: Quincy, Bloomington, Elgin, Streator, Rock Island, Aurora and Rockford.
- (3) This ruling included only policemen and firemen.

"ee, its successors or assigns, shall also sell at its general offices in said city to school children upon the presentation of a certificate of the principal or person in charge of said school, that such child or person is a pupil of and regularly attending such school, books of forty(40) tickets, valid within sixty days(60) from the date of sale, for one dollar, each of which tickets shall entitle the pupil named on the cover of such book to ride between the hours of 7,30 a.m. and 5.p.m. during the days that said school is in regular or special session. It being expressly understood that the right to use such tickets shall accrue to all pupils attending school in the City of Bloomington, whether the schools are public or private, but not including college or high school students over sixteen years of age." (1)

One grant offers special rates during the 'rush hours' for its patrons as,

"Such company shall also sell seven tickets for 25 cents which shall be accepted during the following hours of every day in the week except Sunday, to-wit; Six(6) a.m. to seven(7) a.m., twelve(12) m to one(1) p.m., and five(5) p.m. to six thirty(6,30) p.m., and on Saturday during the hours of four(4) p.m. to six (6.30) thirty p.m." (2)

In regard to special rates, it seems that a rate similar to that mentioned in the last quotation is likely to work out badly in practice. At these periods in the day there is extra travel, es-

(1) Bloomington and Normal grant, p.9.

(2) Elgin, Revised Ordinances, p.626. (provision for special or reduced rates, usually in the form of tickets, are found in the licenses of :Quincy, Bloomington, Elgin, East St. Louis, Streator, Reok Island, Evanston, Aurora and Rockford.)

pecially in the evening from five to six-thirty, and rates offered to patrons would tend to increase the load at those times by the addition of people aside from the class that the rates are designed to help, ie. the working class. It should be insisted that where the company has for sale tickets, the same should be for sale on the cars and in as small quantities as will enable the poorest of patrons to invest as much as his means permits.

There are several forms of compensation to municipalities to be found in the grants under consideration. It should be noted that only twenty-one of the licenses in question specify in any manner compensation to the city. Among the common forms are: 1. a percentage of the gross earnings or receipts, 2. a certain sum annually which may be for a specified municipal purpose, 3. a car tax, and 4. a car mile fee, ie. an amount based upon the number of miles that each car travels. A brief consideration of these respective forms of compensation is essential to any criticism of the existing kind of compensation to Illinois municipalities. The car license fee has no real advantages, for the reason that any fee or tax based upon the number of cars that the company is to operate will invariably tend to keep down the number of cars used to the lowest possible number. Of course, it is desirable to levy a small fee per car to cover the cost of inspection, where the city has that function; but the requirement of a large tax per car, as \$25.00, is bad. While the end sought in an annual sum to be paid for a definite municipal purpose as a park, is well enough in it-

self the grant ought not to tie the hands of the city by stipulating in what manner such fees are to be expended, except when the tracks of the company are wholly within that park. The best kind of compensation for the privileges conferred by the city upon the company, if any is to be required, is a per centum of the gross receipts. A per centum of the gross receipts is more advantageous than a portion of the net receipts in that it is easier to collect, in fact division of the net receipts presupposes rigid financial control of the capitalization, equipment, replacements, etc. as demonstrated by the Board of Supervising Engineers in the city of Chicago. A part of the gross receipts is then, 1. easy to collect, 2. it does not operate to limit or curtail the service of the street railway company, and 3. it does not 'mulot' the public. Where fees or taxes are exacted by the city as compensation the public usually suffer, for the company can shift such a burden to its patrons, either in the form of higher rates or in poorer service.

Quotations from certain of the licenses examined serve to illustrate the various kinds of compensation exacted.

"It is a condition of this grant, and the Illinois Central Traction Company undertakes and agrees to pay for the rights and privileges herein granted.....the sum of five hundred (\$500.00) dollars to the city of Springfield, Illinois such payment to begin only after the fifth year of its operation....etc"⁽¹⁾

"In consideration of the rights and privileges herein granted,

(1) Springfield, Franchise Code, p. 208.

"in addition to those heretofore formulated, the said company agrees to make the following payments, and at no other time in the term of this ordinance shall it be required to make any other or further payments to said city, provided, however, that such payments will not relieve the said company, its successors and assigns, from the payment of a car tax not to exceed \$10.00 per car per year or from its ordinary and general taxes as may be levied or assessed against all property holders, such payments as follows,

Thirty(30)days after the expiration of one year from the final passage of this ordinance.....said company shall pay to the city a sum of money equal to two per cent(2%) of its gross receipts as derived annually from the street railway business in the present or future limits of said city...." (1)

As a corollary to the city being compensated for the use of its streets by public service companies engaged in the transportation of persons over said streets, the power of the city to supervise the accounts of the street railway is absolutely essential to efficient public control. This is recognized in the license just quoted above,

"When said company, its successors and assigns, makes its payments to said city.....it shall at the same time accompany its remittance with an itemized statement of the gross receipts of said company, the truth of which statement shall be to by the Auditor of said company; and should the city so de-

(1) Bloomington and Normal Railway, Electric and Heating Company,
p.11.

"sire, the Comptroller or any other person authorized by the City Council of said city, shall have free access to the books pertaining to the gross receipts, for the purpose of checking up and further verifying the truth of the sworn statement above provided for." (1)

Like provisions are found only in the grants in Quincy and Evanston, but they are also the only cities to make provision for supervising the financial operations of the street railway companies operating in their streets. The great exception is the splendid license to the Evanston Traction Company. However, that grant is somewhat different in that the city of Evanston has placed the supervision and control of its street railway in the hands of a board of engineers, composed of the chief engineer of the company and the commissioner of public works representing the city. They are to supervise the maintenance and operation of the street railway in all respects, but in case of disagreement between them they shall choose temporarily a third engineer to act in conjunction with them on the matter in controversy. Because of the fact that the grant is so detailed on the question of supervision of the accounts of the company as well as the disposition of their earnings, it is desirable to quote these clauses, even at some length, they being best designed to point out, to other Illinois cities, in what ways they have fallen short in controlling the financial operations of the traction companies operating within their jurisdiction,

(1) Bloomington and Normal grant, p. 12. (the following cities make provision for compensation in some of the forms above described: Joliet, Quincy, East St. Louis, Evanston, Aurora, Rockford, and Rock Island.)

"On or before the first day of August and February of each and every year that the company continues to operate said street railway system after the expiration of said twenty-four(24) months' period of rehabilitation, the company shall deposit in a bank or banks of the city of Evanston in a separate fund to be designated as the renewal fund, a sum equal to ten per cent(10%) of the gross receipts of said street railways and property, which shall constitute a reserve fund for taking care of renewals and depreciation of said street railways and property for the preceeding six months; and out of the said fund the company shall from time to time pay such amounts as are necessary (or as required by the board of engineers) to pay for renewals of the said street railways and property; the portion of said fund remaining unexpended to continue in said fund as a provision for depreciation of said street railways and property. No payment shall be made by said company out of said fund, except renewals, which are hereby defined to be the replacement of any principal part of said street railways or their equipment or appurtenances. And such renewals shall be made as ordered by the board of engineers as hereinafter provided, but the company shall, at no time, be required to expend a larger sum for renewals than embraced in the fund. Nothing herein contained shall be construed to prevent the company from investing at any time any unexpended balance of the renewal fund in its own bonds. Such bonds shall be deposited in

"lieu of said funds withdrawn, Interest on any such investment is to be credited to gross earnings.

On or before the thirty-first (31) day of July in each year the company shall come to an accounting with the city as of the 30th day of June last proceeding upon the following basis:-

From the gross earnings of said street railway system for the year ending on said 30th day of June, there shall be deducted for such year,

1. Interest at the rate of six (6) per cent per annum on the capital investment as same is determined by section 6 hereof.
2. All amounts paid out as taxes and assessments levied and imposed upon real and personal property and earnings of the company, and any city tax.
3. Ten per cent (10%) for renewals and depreciation as provided (above). This deduction shall not be made during the period prior to August 1st, 1915.
4. Three per cent of the gross earnings for personal injury claims.

After the deductions as aforesaid from the gross earnings, the amount remaining shall be considered net earnings and shall be divided between the city and the company in the following proportions:-

Company, Ninety per cent. (90%)

City, Ten per cent. (10%)

"This compensation shall continue until the board of engineers shall certify that the company has expended certain sums as herein set forth.

Whenever the board of engineers shall certify to the city council of the city of Evanston that the company has expended the sum of \$100,000 in new construction, reconstruction, new property and equipment in the rehabilitation of said street railway system (exclusive of said purchase price of the present system, repairs and operating expense) the compensation to the city shall be and is hereby fixed at five per cent and the company's proportion shall be ninety-five per cent. computed as above provided; and whenever the board of engineers shall certify to the city council that the company has expended the sum of \$200,000 in new construction, reconstruction, new property and equipment in the rehabilitation of said street railway system (exclusive of said purchase price of the present system, repairs and operating expenses) the company shall not be compelled to pay any compensation for a period of three years (3) thereafter. After such three years' period the compensation of the city shall be, and is hereby fixed at, five per cent., computed on the foregoing basis. The books of the company shall be kept in Cook County, Illinois, and shall at all reasonable times be open to the inspection of the city." (1)

- (1) Evanston, Code, pp. 1034-1037. The Evanston Traction Company paid the city in 1914, - \$8,263.16 pursuant to 90% and 10% arrangement. Company then spent the \$200,000 for rehabilitating the line. Next payments on 95% and 5% basis begin July 1st, 1917. (Quincy and Bloomington also stipulate in the licenses as to the disposition of the earnings.)

The great criticism of the Illinois grants under consideration, is that they have failed to make any adequate provision for controlling the accounts and finances of the street railways operating within their jurisdiction.

Due to the fact, that many of the phases of the transportation problem are tied up with the ability of the city to supervise in an adequate manner the finances of the company, it is extremely desirable to provide some agency to take charge of such matters, as for example, the board of engineers in the city above quoted. The feasibility of new extensions to parts of the city that need service, the possibility of improved service in respect to the installation of new equipment and safety devices, and the proper and adequate compensation to the municipality are a few of elements intimately related to a rigid, supervisory control of the street railway companies operating in the cities under review. In connection with the problem of acquiring the street railways for purposes of municipal operation, the control of the earnings of the private company is not only the most desirable, but is, also, practically the only means by which the cities in Illinois can ever hope to operate the public utilities within their jurisdiction, unless the debt limit is raised. If the municipality is to acquire the plant by the method of accumulating a 'purchase' fund from the receipts from compensation, the entire business of the privately owned and operated street railway must be supervised in an adequate manner, otherwise it is extremely likely that the

city will obtain a badly depreciated property. Summarizing, then, it is one of the greatest defects in the Illinois licenses examined that they fail, to any adequate degree, to protect the rights of the public in respect to that matter which is the controlling factor in determining whether a street railway is to pay as a 'going concern'.

C. Regulation by the Public Utility Commission.

In 1913 wide jurisdiction was conferred upon the new State Commission created to carry into effect the regulation of public utilities in this state. Among its powers are authority to control the franchises, service, licenses, leases, rates, capitalization, etc of all street railway companies operating within the state. The authority of the Commission is established, for the Illinois Supreme Court, who, is, by statute, made an appellate court for all litigation arising out of public utility controversies that are first tried by the Commission, has sustained in eleven of the fifteen cases appealed the orders of the State Commission. Most important of these cases for this study are: Chicago v West Towns Railway Company and Chicago v O'Connell, cited in the first chapter. These cases lay down the rule that the jurisdiction of the State Commission is exclusive in matters affecting public safety, welfare, convenience, contract agreements, licenses and regulations of the company or municipality notwithstanding. It is interesting to note that service conditions and rates are matters that the courts consider to affect public welfare, comfort, safety and con-

venience. The cases noted above, having been elaborated upon already, it might be well to quote some of the orders and opinions of the Commission affecting the cities considered in this paper. It should be noted that as compared with regulation over gas and electric or telephone and telegraph companies, the regulatory powers of the Commission over street railway companies have been slight. The usual procedure is: following a petition or complaint from an interested party, the Commission holds a hearing on the case in controversy, and subsequently files its opinion together with an order to carry out its judgment, as expressed in the opinion.

In the matter of extensions, the Commission has, in two cities, listened to petitions from service, and after being convinced that petitioners needed the desired service in their district, in each case entered an order directing the companies to construct and to operate the street railway sought. In Decatur, a group of citizens, desiring an extension along a certain highway known as Geddes Lane, appeared before the Commission praying that an order be issued to the Decatur Railway and Light Company designed to effect this desired extension. The Commission, after a hearing in which it appeared that 274 houses in that district would be benefitted by the said extension, entered the following order, (1)

"It is Therefore Ordered that the Decatur Railway and Light Company be and the same is hereby directed and ordered to extend what is known as its Eldorado St car line in Decatur,

(1) see Opinions and Orders of the State Public Utility Commission, no. 1, May 1916, p. 28. (order dated May 4, 1916) extension constructed and in operation.

"Illinois, by constructing the necessary track or tracks... (on) a public highway commonly known as Geddes Lane....., and to operate and maintain the same when the construction of the said street car line is completed."

A similar case arose in Springfield in November 1916 when the Springfield Consolidated Railway Company petitioned for a certificate of convenience and necessity for an extension to Bergen Park. The Commission here entered a similar order, saying in the course of its opinion, ⁽¹⁾

"The application herein appears reasonable and the operation of the said street car line is necessary and would contribute to the convenience of the public."

It should be noted, however, in the matter of extensions that the city by the Constitution ⁽²⁾ possesses the power to consent to the location of tracks within its jurisdiction. It is manifest, then, that the jurisdiction of the Commission does not go as far as to supersede the constitutional power of the city, not only to give a street railway company permission to locate in its streets, but also to designate upon what streets the company shall locate its tracks. ⁽³⁾

One of the early rulings of the State Commission was as follows, ⁽⁴⁾

"The commission holds that it is not against the public policy of this state for railroad companies and street railway

(1) Orders and Opinions, vol. 4, no. 3, p. 110, October, 1916.

(2) Article 11, section 4.

(3) Blair v Chicago, 201 U.S. 400.

(4) Ruling no. 6 of Commission, March, 28 1914. (Orders and Decisions, vol. 1, p. 69. note. first bound volume called Orders and Decision.)

"companies to issue free transportation to policemen of a city or village, members of a fire department of a city or village, and to United States mail carriers, to be used by designated persons while in the performance of their duties as such."

Another order, designed to prevent accidents at dangerous crossings at boulevards or street crossings where collision with vehicles is likely to occur, is as follows, (1)

"It is Hereby Ordered that every street railraod company operating cars in this state shall cause its cars or trains to come to a full stop at the near side of every boulevard or pleasure drive until the moterman in charge knows that the way is clear and safe for him to proceed."

An order of May 21, 1914 issued to the Danville Street Railway and Light Company is of the same character, in that it orders the Company to install a hand-operated derail over the Chicago and Eastern Illinois Railroad Company's tracks as a dangerous grade crossing in the city of Danville. (2)

An order of the Commission of March 31, 1914 permitting the St. Louis, Springfield and Peoria Railroad Company to use the tracks of the Alton, Granite and St. Louis Traction Company in the city of East St. Louis is illustrative of the jurisdiction of the Commission in respect to the joint use of tracks. The order even prescribes the compensation to be paid to the latter company for such permission to use its tracks.

(1) Orders and Decisions, vol.1.p.79.

(2) " " " , vol.1.p.167.

(3) Twenty-two and one-half cents per car mile.

In respect to rates the Commission has taken jurisdiction also under its powers in the Public Utility Law of 1913. After hearing numerous complaints over the action of the Aurora, Elgin and Chicago Railroad Company discontinuing their fifty-four ride commutation tickets the Commission entered the following order,
(1)
March 11, 1914.

"It Is Further Ordered, adjudged and decreed by the Commission that the Aurora, Elgin and Chicago Railroad Company shall continue on sale and provide for the use of fifty-four ride monthly commutation tickets under a proper tariff which can be posted on one day's notice, between such stations on its lines of road, in Illinois, at the same rate of charge as is provided in the Aurora, Elgin and Chicago Railroad Company's local passenger tariff G.P.D. no. 1. I.P.U.C. no. 1. that was in effect.....etc."

From this brief survey of the work of the Commission covering the first three years of its existence, as evidenced from its orders, opinions and rulings, one must conclude that this body possesses wide and comprehensive powers over the street railways operating within the state. It is also manifest that its powers and importance will increase to a much higher degree with respect to regulation of street railways, as the process of consolidation and unification of the various street railways and inter-urban lines goes on. Significant in this respect, is the holding

(1) Orders and Decisions, vol. 1. p. 553.

company known as the Illinois Traction System controlling, not only a vast net work of interurban lines operating and extending from St. Louis, Missouri to Danville and Peoria, Illinois, but also the local street railway system in the cities of Urbana, Champaign, Decatur, Bloomington and Quincy. This tendency toward consolidation makes it all the more essential that that the State Public Utility Commission, not only possesses wide and comprehensive powers over the street railway companies, but also, and more important, that they actually exercise these powers, because such vast enterprises as the Illinois Traction System can be controlled and made responsive to public needs to a high degree only by an ever vigilant and watchful state commission.

Chapter V.

Further Privileges and Powers in Respect to Regulation.

A. Working relations of the city and the company.

Due to the fact that the licenses analyzed in detail in the foregoing pages involve a distinct relationship between the city and the company in several aspects, it might be well to discuss briefly the mutual rights and obligations of the two parties to the contract, as brought to light from an examination of the licenses in the fifteen cities studied.

This relationship between the above two parties is both contractual and regulatory. It is contractual because the interpretation placed upon these licenses is that such grants, once given by the city to a street railway company authorizing the use of the streets for transportation purposes, become binding contracts which cannot be impaired by subsequent legislation. It is regulatory through the specific delegation to the councils in the Cities and Villages act of the power to regulate the use of the streets as well as the enumerated and reserved powers of a city found in the various licenses granted to street railway companies. Speaking generally in regard to the question whether the cities under consideration have exhausted their regulatory powers over street railways, one may say that there is a considerable measure of police power remaining to the city. On the whole, the licenses studied are quite adequate as far as protecting the rights of the city in regulatory matters. The contractual aspect of this relationship

ties the hands of the city in those matters definitely prescribed except to measures of a police character.

The most common manner in which the city is protected by the grant is a definite stipulation that it shall be protected and saved from liability in any respect on account of the license to the company. In order to protect to an adequate degree the municipality from damage suits of this character many of the licenses require the streetway in question to deposit a sufficient bond to liquidate any damages arising under the license. Other grants go so far, as to stipulate that abutting property owners shall be also protected from damages to their property resulting from the construction of the railway, as,

"Said company shall file its formal acceptance of the same with the City Clerk, together with a bond in the penal sum of ten thousand dollars, to be approved by the City Council, obligating said company to protect and save harmless said city from all damages by reason of the granting of this ordinance to said company, or by reason of the negligence of said company in the construction of its lines; provided, however, that unless such acceptance, consent and bond shall be filed within thirty days after the passage thereof, this ordinance shall be void." (1)

"Nothing in this ordinance contained shall release the Rockford Light and Power Company from its liability for any or all damages to owners of property abutting upon the street, alley

(1) Elgin, Revised Ordinances, p. 617.

"or public grounds upon which or over which said railways are run, which said owners may sustain by reason of the construction, location and operation of the road, nor from any negligence of any of its employees, nor from any cause that would render it amenable to the law; and said Rockford Railway Light and Power Company, its successors or assigns, shall at all times defend and save harmless the city of Rockford from all suits, damages, judgments, decrees and costs which may be brought or rendered against said city by reason of the granting of the privileges and franchises herein contained." (1)

An examination of the regulatory measures in these Illinois licenses shows that the cities, in some respects, have made provision for municipal regulation. Some few cities have attempted to cover this matter by detailed stipulations on nearly every point involved in the construction, maintenance and operation of a street railway. Other cities have adopted what seems to be a much more effective method, by merely prescribing such conditions in general, but reserving to the municipality a large discretionary authority to regulate the business of the company at all times. This latter method is more feasible for two reasons, 1. no city is static in character but is dynamic, so that detailed stipulations that might be entirely adequate at the present moment, would within a decade be entirely out of date and valueless as means to protect the public. 2. The mere enumeration on the grant of prohibitions upon or obligations of a company will not secure the effective

(1) Rockford, Railway Light and Power grant, p. 5. (this protection is found in one or more of the licenses of each city considered in this study.)

compliance with such obligations, unless there is some definite agency created to see that the measures are enforced. We have seen that such agencies are almost wholly lacking in the Illinois cities under review, except for the supervision of the Superintendent of Streets in matters relating to the care and maintenance of the streets. It is, therefore, very essential to give broad powers to the city to regulate the maintenance and operation of the traction companies carrying on their business within the confines of the municipality. Several of the cities have protected themselves in this matter as follows,

"The city of Rockford reserves the right to adopt other reasonable rules and regulations in respect to the management and operation of said railway from time to time, and to control the use, improvement and repair of said streets, each and every one of them, and every part thereof, to the same extent as if not grant of a right to use the same had been given said company, and to make all necessary police regulations concerning the management and operation of said railway..."⁽¹⁾

"The said City of Decatur, through its City Council, hereby expressly reserves the right to hereafter enact any and all necessary Police Regulations as to the operation and maintenance of such railroad. Said City of Decatur reserves the right, at any time hereafter, to be an Ordinance therein providing, to require the Grantee herein to execute an indemnifying Bond

(1) Rockford, Railway Light and Power Company grant, p. 5.

"for the period of one year and any succeeding year or years that may be so ordered by the said City Council for the sum of Ten Thousand Dollars(\$10,000),to be approved by City Council,providing for the payment of such damages as may result from a failure to comply with the terms of this Ordinance." (1)

"This permission and authority hereby granted is subject to all general ordinances,now in force,or that may hereafter be passed,concerning street railways,so far as applicable there-
to." (2)

"Nothing in this ordinance shall be construed as depriving the city of any right of exercising any police power which it would have possessed or enjoyed had this ordinance not been granted."

"If said company shall make default in or fail to comply with the terms and conditions of this ordinance if such default or failure shall continue for ten days after notice thereof specifically stating the matter of default or failure complained of shall have been served by duly authorized officers of said city upon some executive officer or superintendent of said company,then,for each day that such default shall continue after expiration of said ten days period,said company shall be liable upon conviction to the payment of a penalty to said city of not less than ten dollars nor more than fifty dollars to be recovered in any court of competent jurisdiction." (3)

(1) Decatur,Ordinances and Resolutions,1900-1913,p.342.

(2) Elgin,Revised Ordinances,p.629.

(3) Quincy,Revised Ordinances,p.559,561.

In addition to the police power reserved in the grants as above, there are many kinds of services regulated by the city. Provisions in grants for paving of the road-bed of the company, joint use of tracks, service standards in respect to the frequency, regularity and routing of the cars, safety and health conditions, locations of poles, wires, and other appurtenances, use of the poles by the city for corporate purposes, repair of the streets, responsibility of the company for damages resulting to water mains from electrolysis, each and every one are designed to protect public rights.

In regard to the degree that this power of regulation has been exercised by the cities under review, it should be said that, on the whole, the cities have tried to protect the people from undue encroachment of public rights by the transportation agencies. If such attempts have not been successful, it is due, in great measure, to the fact that the cities have failed to provide for a supervisory board to see that these obligations resting upon the street railway companies are fulfilled in every particular. True it is, that many of the grants prescribe penalties for failure to comply with the terms of the ordinance, but the remedy there offered through the courts means probable litigation, which is not only tedious, expensive and sometimes fruitless, but also in many cases does not remedy the existing situation at the time necessary to conserve the rights of the public to the highest degree.

Not only is it necessary to protect the rights of the public by detailed stipulations in the grants plus adequate reme-

dies to secure the faithful compliance on the part of the company of the imposed obligations designed for a public purpose, but it is also essential to secure municipal control from another point of view. As stated above the cities that have been considered in this study are dynamic in character, so that the conditions under which the new grants will be made within the next few years (see tables 1 and 3, appendix.) will be vastly different from those under which licenses in the past were granted. It is likely, moreover, that in some cases the center of traffic and population has moved a considerable distance from the present transfer station. Because of the fact that the growth of the cities under review is rapid, the municipalities must save to themselves some power to meet new conditions with an effective planning for their future development. (1)

Lastly, in respect to municipal control, the most significant fact of all must not be lost sight of, namely, that a license to occupy the streets of the city confers no common or inherent rights upon the street railway companies, until such licenses are acted upon in such a way as to produce binding contracts, and, therefore, the city as the grantor of such privileges can specify by broad and general clauses as well as by detailed enumerations the

- (1) An interesting development of this notion of a city considering its future possibilities and development is found in Elgin, which is considering future transportation problems with the avowed purpose of correlating the development of their transportation agencies with the future growth of the city itself. But, without police power in regard to the matter of extensions no city can work out a comprehensive plan for a better community. see Elgin City Plan, published by the Elgin Chamber of Commerce.

rights, immunities and privileges that the company may exercise and enjoy. Moreover, according to Munn v Illinois any business of a public nature is subject to governmental regulation.

It must be noted, however, that the relations of the city and company are not entirely one-sided in respect to the fact that the company has no rights or immunities secured to it. It is true that some of these rights are recognized in theory only, but that is one feature where the existing licenses fall short of model grants. The first privilege, and one commonly mentioned in the Illinois licenses reviewed, is a definite grant of the right of way over the streets enumerated in the license. In some grants there are specific penalties prescribed for obstructing the track of a street railway company,

"In all cases where any team or vehicle shall meet any car on said lines of railway, or either of them shall be overtaken by any car thereon, such team or vehicle shall give way to such car,

No person shall wilfully obstruct, hinder, delay or interfere with the passage of any of the cars on any of said lines of railway tracks by placing, driving or stopping, or causing to be placed, driven or stopped, any team, vehicle, or obstacle or thing, in, upon, across, along, or near the track of either of said lines of railway after being notified by the person in charge of the car thereon, by the ringing of the bell or otherwise. And whoever shall violate any of the provisions of

"of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars and not less than five dollars."⁽¹⁾

In respect to other privileges or immunities that the company should possess, there is little mention in the licenses under consideration because these privileges have to do with the financial management of the railways. 1. In order to secure the construction of a street railway in a city, there must be definite attractions that will make the capitalists wish to invest their money in such undertakings. One of the essential elements considered by capitalists is the length of the term for which they can secure privileges in the streets, i.e. whether it be sufficient to permit them to recoup the original investment, if a short term grant, or whether there are possibilities of an indefinite grant, through renewals. 2. Another thing that tends to invite capital is the monopoly character of the business, and hence assurance should be given the capitalists that their interests will be protected from competition. Because safe business methods, and those should be the only kinds permitted in the operation of any type of a public utility, recognize the principle that there must be adequate protection to the capital invested, it is only fair to assure the company the means to recoup itself; of course, provided that the city's control is rigid enough to prevent the misuse of the earnings of the road, so that plunder of the property is made impossible. 3. Together with principle of protection to the capital

(1) Streator, Revised Ordinances, pp. 437-438.

invested is the equally important axiom that the company is entitled to an adequate return on the investment. This latter principle is subject to misuse unless there is rigid supervision over the capitalization of the plant.⁴ Finally, the company is entitled to protection in respect to the enjoyment of its property, and the city is obligated to give its property the same measure of protection, that owners of private property may demand.

Generally speaking, then, the relations of the city and company while numerous and varied are, for the effective solution of the transportation problem in the fifteen cities studied, the most vital element in measures designed to give adequate protection to public rights as well as to secure the privileges and immunities of the companies involved.

B. Municipal ownership.

Any discussion of municipal ownership that may be offered in respect to Illinois cities considered in this study is theoretical, because none of the cities under review have tried the plan as yet. The practical difficulty is that the constitutional debt limit is not high enough to permit the city to acquire the street railways for public operation. In theory, however, they possess such power by the acts of the legislature of the years 1903⁽¹⁾ and 1913.⁽²⁾ It is significant to note, that only four cities have made any provision for municipal ownership.⁽³⁾ Aurora and Elgin, the first two cities to provide for this, reserved subject to subsequent authorization of the same by the legislature, in that the grants

(1) Hurd, Revised Statutes, 1913, chap. 24, p. 504-507.

(2) Norton, Illinois Public Utility and Municipal Ownership Laws Annotated.

(3) Aurora, Elgin, Bloomington and Evanston.

by those cities were made before 1903. Bloomington and Evanston have gone into the matter in much more detail.

To outline some of the provisions found in a municipal ownership section, the Bloomington ordinance while cumbersome and technically impractical, offers illustrations of what is contained in such a section,

"If at the expiration of the rights under and by virtue of the grant said company, its successors and assigns, has not acquired the right to operate for an additional period in said city, then the said company agrees that the city shall have the right upon giving twelve months notice in writing of its intent so to do, which notice shall be given at least one year and not more than two years before the expiration of the twenty years from the date of the final passage hereof, to purchase and take over the entire street railway system of the said company within said city, including all property existing which constitutes said street railway system and also extensions to said street railways within said city; provided that said city shall at that time have power so to do at such price as may be agreed upon by said city and said company, or upon failure so to agree, then for such price as may be fixed by a board of arbitration, to consist of five persons, of whom a majority shall decide all questions. (next clause has to do with the choice of arbitrators.)

The price which said city shall pay for said property shall be its value as a going property for street railway purposes

"at the time in question, and in addition ten per cent. (10%) of such value. The said city shall forthwith after said arbitration and the expiration of this grant, accept and pay for such property at such valuation so fixed by arbitration, plus ten per cent. (10%) as above provided; said ten per cent. (10%) shall not be taken into account in arriving at such valuation; and provided further, that said arbitration shall be concluded within or prior to the expiration of twenty years from and after the date and final passage hereof." (1)

The above is a good example in several respects of what not to include in a public ownership clause. The entire procedure is cumbersome. The clause providing arbitration stipulates that such negotiations shall be concluded within the period of the twenty year grant, still it is possible for the company to drag out the arbitration proceedings beyond this time, and thus prevent the city from acquiring the plant. There is no provision for adequate capitalization or valuation, and moreover, no supervision as in Evanston by the Board of Engineers, to prevent overcapitalization. By the clause 'all property then existing which constitutes said street railway system' the city is obligated to purchase old property which may be valueless. The opening clause 'if at the expiration of twenty years the company has not acquired additional rights' is contradictory with a statement a few lines below that the cities may commence proceedings for the purpose of public acquisition from one to two years before the expiration of

(1) Bloomington and Normal Railway, Electric and Heating Company grant, pp. 12-13. (a very detailed grant and an excellent one is included in the ordinance to the Evanston Traction Company 1913. Code, pp. 1037-1041.)

the twenty years.

The provisions of the four licenses providing for municipal ownership are open to criticism because they fail to provide, with the exception of the Evanston license ⁽¹⁾, the means necessary to maintain the equipment at all times in order to insure that the city will secure a first class system, in the event of purchase. Again the lack of a municipal supervisory board is very manifest. Such a board is essential to regulating the finances of the company, and to insure that only bona fide investments are added to capitalization or permanent valuation. Its function is also important, in that it is the only means to insure that the system is maintained in first class shape at all times, otherwise the city is likely to acquire only 'two streaks of rust'.

It is not the purpose of this paper to offer any conclusions on the relative merits or demerits of public ownership. The advantages of the plan are, 1. It has proved to be practicable where tried, 2. It would tend to keep the street railways from constant interference in municipal politics, thus purifying to a great degree civic affairs. 3. It would give better service at the same or lower rates. ⁽¹⁾ 4. It would enable the city to develop the community by means of extensions to those portions of the city and suburbs that merely need transportation facilities to unite them to the center of the municipality. The disadvantages of the plan are pointed out by Dr. C. L. King ⁽²⁾ as follows, 1. To the problem of regulation it adds all of the problems of proprietorship and o-

(1) An example of the possibility of lower rates in the rate of three cents on the municipally owned system in Cleveland, Ohio. For an extremely interesting account of the late Tom Johnson's effort for this rate, see his biography, My Story.

(2) King, Regulation of Municipal Utilities, pp. 22-53.

peration,thus trebling the already complicated problems of managing municipal utilities.2.municipal ownership will dispense with none of the machinery necessary for adequate regulation and will require added expenses incident to the administration of problems connected with proprietorship and operation.3.the expense of regulation will be no less under municipal ownership and operation.Again ,it must be considered that the political institutions are already overburdened,and cannot be reasonably expected to take on new functions,if competent regulation is possible.

Any adequate provisions in regard to public ownership in the Illinois cities should clothe the cities with power to,1.Have financial power by the sale of bonds to purchase the street railways within their jurisdiction,otherwise they are helpless.⁽¹⁾ 2.Secure to the city thru a board of supervisors that capitalization of and valuation placed upon the street railway system represents only bona fida investments.New additions or new equipments should be rigidly supervised and controlled to see that only actual costs of the same are charged to capitalization or valuation accounts.Again,in connection with this old property no longer of value should be removed from the valuation.3.At any time after notice of one year,the city may acquire the plant,paying for the same the valuation as fixed by the board of supervisors less depreciation.The value of the licenses are to have no price set upon them,not being a bona fida investment.4.Finally,the city

- (1) In order to persuade capital to invest,the liability for bonds must be placed upon the credit of the city,not upon the plant itself.However,there is a practical difficulty that placing such bonds upon the credit of the city would make them within the classification of the city's debt. This would cause the cities to exceed the constitutional debt limit.

should possess the optional power of leasing the system to another company, provided that the rental derived from such lease will cover interest, depreciation and an annual sum sufficient to amortize the property within a definite term of years, ie. the life of the utility.

Chapter VI.

Conclusions.

This study of the street railway grants of fifteen of the larger cities in Illinois outside of Chicago has described in detail the stipulations in respect to the various means by which this type of utility is operated and controlled. In conclusion, it is well to summarize the main tendencies that a study of the various phases of street railway grants brings forth.

1. The main point to be noted with respect to the legal status of street railway grants in Illinois cities is the vital distinction made by the courts in this state between a franchise and a license. According to judicial interpretation, the charter of a corporation to exist is the franchise. On the other hand, a license is the grant of privileges by the city to a street railway company to use the streets for the purpose of constructing, operating and maintaining its line. Thus a franchise emanates from the state, and can be secured by any group of persons that can qualify, but the granting of a license is a local function, secured by special act or ordinance, and confers special privileges and immunities for a limited term of years.

2. After the street railway corporation has secured the license from the city and has complied with the conditions set forth in it, the grant becomes a valid contract under the rule of the Dartmouth College case. However, under the police power the construction, main-

tenance and operation of the street railway may be regulated in detail by the municipality. Moreover, by the Public Utility Law of 1913 the street railway companies are subjected to state control and regulation in a number of important matters, e.g., service, rates, capitalization and extensions.

3. The state law prescribes the maximum term for which a license to occupy the streets may be granted to be twenty years. In practice, this rule does not seem to have been observed in some cities. Another important criticism to be made in relation to the term of the grant is that in nearly every city two or more licenses have been granted, expiring at different dates and in some instances held by different companies. This results in the fact that these cities are unable, in renewing old or granting new licenses, to make as favorable terms as would be possible if all licenses were to expire at one date. This situation becomes of greater importance in view of the fact that nearly one-half of the existing contract licenses in these cities are to expire within the next decade. These cities, then, are not in as advantageous a position to dictate new conditions to the company as they would be, were they unhampered by overlapping licenses.

4. Considering the means by which grants may be terminated, provisions for forfeiture of the privileges therein for non-compliance with the terms of the license are likely to be nothing more than futile. The remedy of the city, if the company is at all obstinate, is found in the courts. If relief is obtained there, it is usually

after tedious and expensive litigation, but the point at issue may continue to exist during the many months that the controversy drags along in the courts. Therefore, the only provision to be inserted in a license with respect to forfeiture should be a clause obligating the company to construct and operate cars on a specified portion of its line within a definite time or forfeit the rights and immunities granted to it. The clause should be specific, so that possible litigation would be rendered impracticable. As an evidence of good faith the company should be required to file a bond. If the grantee fails to carry out the provisions looking to placing the road in operation in a reasonable time, it should also forfeit this bond, to compensate the city as damages.

There are three types of licenses, all of which relate to the termination of the grant. They are 1. perpetual, 2. short term, 3. indeterminate.

(1) Perpetual grants can be condemned both in theory and in practice in this study: in theory, because in this day and age, it is an unwarranted bargaining away of valuable public rights; in practice, it is forbidden by the Constitution of Illinois. (1)

(2) The advantages of the short term grant are,

a. The company is made responsive at all times to changing conditions.

b. Thus there are greater opportunities for meeting changing conditions by periodical revisions of service standards, rates, etc.

(1) Constitution of Illinois, art. 2, sect. 14.

But it appears that they are more than offset by the disadvantages,

- a. The tendency of this kind of a grant is to keep the utility in local politics constantly, either to prevent the enforcement of present obligations or to secure new privileges.
- b. It is difficult to attract capital to an enterprise where the opportunity for recouping the original investment is improbable.

(3) The indeterminate grant is most desirable because,

- a. The operation and maintenance of street railways is absolutely essential to millions of people daily, and hence some agency, private or public, must carry it on.
- b. This type of a utility is monopolistic in character and consequently competition is impracticable.
- c. In practice, the street railways must continue to operate, therefore, why not recognize the fact, and instead of obtaining an opportunity once in two decades or more to stipulate good service, adopt a plan that will operate continually to produce the desired results? In other words, if a street railway company renders satisfactory service at reasonable rates, why should it not be permitted to operate indefinitely? Indeed, it is essential to the public that it does so continue, otherwise there is likely to be an interregnum when anything but satisfactory conditions are possible. If, on the other hand, the company is not responsive to public control

and demands, then, the indeterminate grant offers an effective and quick solution of the problem of terminating the privileges of the company in question. This is usually affected by the stipulation that the city may purchase for purposes of public operation or may purchase with an option of subsequently subleasing the system to a private operating company which is willing to comply with the demands of the public.

As a remedy for poor service conditions the cities in Illinois would do well, when renewing, or granting new, licenses to consider carefully the feasibility of this latter plan as an effective means of not only terminating grants to unresponsive companies, but also as a means by which to secure the revision of obligations that will meet public needs constantly.

5. The stipulations that the cities examined have placed in their grants with respect to construction and maintenance are, on the whole, excellent. Details as to location of tracks, construction of the substructure, poles, wires, paving and repairs on the right of way, supervision by local officials, sprinkling the streets in summer and removing ice and snow from the right of way in the winter are good provisions. The chief criticism of these details is that in practice they are rather likely to be unenforced, due to the lack of a supervisory board to compel the compliance with such stipulations.

6. There are also found in the licenses of the fifteen cities good provisions for the many matters connected with the problem of

securing good service at reasonable rates. Such provisions include details with respect to the frequency and regularity of cars, physical conditions of employment of the operators on cars, sanitary and safety conditions, extensions, rates, tickets and free service. Again one discovers where non-enforcement of these excellent conditions and obligations resting upon the companies are reported by a city, that it is due in great measure to the lack of a local board to regulate and enforce local stipulations. Hence, these clauses remain as dead letters upon the ordinance books. True it is that since 1913 one has relief from the State Public Utility Commission. However, that remedy is slow and sometimes rather expensive to an aggrieved party that desires the amelioration of poor service conditions, which in some instances are due to the non-compliance with obligations specifically stated in the license.

In this connection, a local board to control a very important matter to the municipality—extensions—is not only quite desirable, but also is essential, if the city wishes to develop in a uniform manner. Undoubtedly the companies follow the business much slower than public convenience or necessity desires, on the theory that new lines should not be built until they will compensate the company sufficiently to provide an adequate return on the capital outlay. Good street car transportation to all portions of the city is the most important element in the growth and uniform development of any urban community, for in this manner are its people tempted

to radiate from the congested parts of the city to the suburbs. This results in a mutual betterment of community conditions. With a local supervisory board all the elements involved in the construction, maintenance and operation of a street railway could be regulated in a manner which would maintain all stipulations and obligations up to standard. By the Public Utility Law of 1913 such a local board as proposed herein could not have final jurisdiction, so that the Public Utility Commission created to enforce the law of 1913 would have to be made a court of appeals to settle controversies in which local interests could not reach an agreement.

In respect to certain problems of rates the clauses that stipulates reduced rates, special rates for school children, transfers, etc. are found to work well. It might be stipulated, from the point of view of convenience, that where tickets are offered at reduced rates that they be placed upon sale on the cars, as well as at designated store, and in small enough quantities as will enable people of small means to purchase. Free transportation to aldermen and municipal officials and employees except policemen and firemen in uniform and in performance of duty should be prohibited. If the Mayor and other city officials must ride to perform city business, the city should buy them tickets where that plan is possible, or allow them a monthly car-fare allowance, in case tickets are not available. (1)

7. The most conspicuous defect of the licenses in the fifteen cities is that they have given away in a majority of instances

- (1) It is inferred from a ruling of the State Public Utility Commission denying passes to state assemblymen that aldermen are not entitled to free service.

most valuable privileges with little or no compensation exacted from the company in return for the rights conferred. The use of the streets is not an inherent right to be enjoyed by any person or corporation. Therefore, because the granting of such rights and privileges affects the community, and is in many respects a liability upon its citizens, the company should be compelled to compensate the city for value received. Of the several forms of compensation found in these cities the car tax should be condemned, because it tends to prevent the operation of a sufficient number of cars to render adequate service, on the theory of Mr. Yerkes that 'the strap-hangers pay the dividends'. The tax per mile of track, exempting extensions for a period of three years after construction, plus a percentage of the gross earnings though not as high as adopted in Toronto, Canada seems feasible. The essential point is that the compensation exacted returns a sum commensurate with the value of the privileges granted. As a corollary to an adequate return to the city for privileges given, the municipality should have absolute power to control the capitalization, accounting and disposition of the earnings of the company. This latter essential is, unfortunately, lacking in most Illinois cities; Evanston, however, is an excellent example of what can be accomplished with regard to the rigid supervision of the finances of the company.

8. Cutting across the powers of the cities in respect to service, rates and capitalization are the functions of the State Public U-

tility Commission. The authority of the Commission to regulate these matters has been repeatedly sustained by the courts. Thus, it is manifest, that here is a new and important factor in the problem of effective and adequate regulation of the street railways. The work of the Commission during the three years of its existence has been excellent. In respect to the street railway business it has asserted its authority in very few instances as compared with the regulation of telephone and telegraph or gas and electric light companies. Its future importance to this study, lies in the development of the electric railway business. Already, the electric railway is becoming state-wide in character, and hence regulation of the same, must similarly become statewide.

9. Government regulation of public utilities is in its infancy and consequently, if in succeeding years, it fails to regulate private operation satisfactorily, it is very likely that relief will be sought in public ownership and operation. None of the cities examined have put it into operation, though four have protected themselves by reserving power to do so. These clauses are not very well drafted and should not be used, with the exception of the Evanston grant, as a basis for the drafting of a similar clause. For cities that are interested in maintaining an effective regulatory power over their transportation agencies, a well drafted public ownership clause with the alternative and optional privilege of subleasing the publicly owned system to a private company is the feasible solution of securing good transportation facilities.

Table no.1.

Chart showing the number of grants
to expire each year, 1917-1960.

1917-- 0	1932 - 16	1947 - 2
1918 - 0	1933 - 1	1948 - 1
1919 - 5	1934 - 1	1949 - 1
1920 - 5	1935 - 0	1950 - 0
1921 - 27	1936 - 2	1951 - 0
1922 - 10	1937 - 0	1952 - 0
1923 - 10	1938 - 1	1953 - 0
1924 - 4	1939 - 0	1954 - 8
1925 - 5	1940 - 1	1955 - 3
1926 - 3	1941 - 0	1956 - 6
1927 - 4	1942 - 2	1957 - 1
1928 - 6	1943 - 0	1958 - 2
1929 - 2	1944 - 0	1959 - 0
1930 - 1	1945 - 0	1960 - 0
1931 - 0	1946 - 0	no time limit - 16.

Total number of grants to expire decade, 1917-1926							<u>68</u>
"	"	"	"	"	"	"	, 1927-1936 <u>33</u>
"	"	"	"	"	"	"	, 1937-1946 4
"	"	"	"	"	"	"	, 1947-1956 20
"	"	"	"	"	"	(4 yrs),	1957-1961 3
"	"	"	"	no time limit.			16

Total under survey, 144.

Table no.2.

Chart illustrating the number of times various clauses appear
City by City.

	Champ.	Streat.	Rock I.	Rockf.	Aurora.	Evanst.	E.St.L.	Elgin.	Urbana.	Bloom.	Quin.	Decat.	Danv.	Joliet.	Spring.
No.grants each city.	9	4	6	1	3	1	25	9	7	2	1	14	14	25	19
When acceptd.	a	3	n	1	n	1	n	5	n	n	1	n	6	3	13
Expiration.	a	a	a	1	a	1	20	a	a	2	1	a	13	a	11
Duration.	6	a	a	1	a	1	21	a	a	2	1	12	13	23	10
Renewal.	n	1	n	n	n	n	n	n	1	1	1	n	3	n	1
Termination.	a	1	n	n	n	1	1	6	1	n	1	4	4	14	3
Spec.routes.	a	a	a	1	a	1	a	a	6	2	1	a	13	12	18
prov re.const.	7	a	a	1	a	1	6	9	1	2	1	9	9	18	4
oblga.to beg. and compl.wk.	2	a	3	n	a	1	16	7	3	1	1	4	3	13	13
penalty fail- ure so to do .	n	n	n	n	2	n	3	n	n	1	1	n	1	3	5
consent abutt.	3	3	1	n	1	1	21	7	3	2	n	6	5	8	2
permits from city.	n	n	n	n	a	1	n	n	n	n	n	1	n	n	1
joint use tracks.	6	2	1	1	2	1	3	n	5	2	n	7	4	2	1
service stand.	2	a	5	1	a	1	16	8	3	2	1	11	4	5	5
transfer prov.	1	a	3	1	a	1	6	3	1	2	1	4	4	1	6
max &min speed.	3	2	2	n	a	n	4	7	n	1	1	1	4	n	n
carrying capac.	n	n	n	n	1	1	n	n	n	n	n	n	n	n	n
stand,health and safety.	n	2	1	n	a	1	n	5	n	1	1	6	2	7	1

note, a - all grants have clause.
n - no " " "

continued next page.

Table no.2.cont.

Chart illustrating the number of times that various clauses appear City by City.

	Champ.	Streat.	Rock I.	Rockf.	Aurora.	Evanst.	F.St.L.	Elgin.	Urbana.	Bloom.	Quin.	Decat.	Danv.	Joliet.	Spring.
City's police power.	a	a	5	1	a	1	19	a	a	2	1	11	11	18	17
protection to city vs damages,	5	a	5	1	2	1	a	6	1	2	1	10	4	14	12
location tracks.	6	a	3	1	a	1	7	5	4	2	1	9	1	4	17
motive power.	5	a	1	1	a	1	12	5	6	2	1	11	10	12	2
paving obligation.	5	a	5	1	a	1	18	7	2	2	1	9	7	14	15
rates.	3	a	4	1	a	1	9	6	2	2	1	8	5	6	12
free service, tickets, etc.	n	2	2	1	2	1	1	5	n	1	1	n	n	n	n
compensation to city.	n	n	1	1	1	1	12	n	n	1	1	n	n	6	1
power of city over accounts.	n	n	n	n	n	1	n	n	n	1	1	n	n	n	n
control as to disposition of earnings.	n	n	n	n	n	1	n	n	n	2	n	n	n	n	n
extensions,	n	2	2	1	n	1	11	5	3	2	1	2	n	1	n
municipal ownership.	n	n	n	n	1	1	n	1	n	1	n	n	n	n	n
Number of grants in each city.	9	4	6	1	3	1	25	9	7	2	1	14	14	25	19

note, a - all grants have clause.
 n - no " " "

Table no.3.

Dates of the expiration of Illinois

grants,city by city.

1. Aurora. 1926,1929,1940.
2. Bloomington. 1929,1955.
3. Champaign. 1921(4),1928,1942(3),1956(2).
4. Danville. 1922,1923(2),1924(3),1925(3),1936,1938(2)
1957.
5. Decatur. 1920,1921(8),1923,1954(4)
6. East St.Louis. 1919,1922(2),1923(2),1924(2),1925(3),
1926,1927(3),1947(2).
7. Elgin. 1921(by general extension passed 1901.)
8. Evanston. 1933.
9. Joliet. 1932.(extension for street railways passed
1912)Interurban grants expire,1952(2).
10. Quincy. 1932.
11. Rock Island. 1919,1922,1923(2),1930.
12. Springfield. 1928(general ordinance passed 1908)
Interurban grants expire,1954(2).
13. Rockford. 1923.
14. Streator. 1921,1934,1958(2).
15. Urbana. 1922(3),1928,1949,1955(2),1956.

(note, the number in brackets after each
year means the number of licenses ex-
piring that year.)

Table no.4.

Conditions prior to operation.

	Prov.term. grant.	Consent Abutters	Permits	Loss time acct strike.	super.const city.off.	track conf. grade street	city may use poles
Aurora.		x	x	x	x	x	
Bloom.		x		x		x	
Champ.		x		x		x	
Danv.	x	x		x	x	x	
Decat.	x	x	x	x	x	x	x
E.St.L.		x		x		x	
Elgin.	x	x		x		x	
Evanst.	x	x	x	x	x	x	x
Joliet.	x	x	x	x	x	x	x
Quincy.	x			x		x	x
R.Is1.		x		x	x	x	
Rockf.				x		x	
Spring.	x	x	x	x	x	x	x
Streat.	x	x		x		x	
Urbana.	x	x		x		x	

note, x - city has that stipulation.

Table no.5.

Standards for maintenance.

	Paying reimbur, obligat.abutt. on Co. when street. paved.	comp. maint. rt.wy. good cond.	Comp to remove tracks temp. improve.	Obligation Co.to. sprink- remove ling snow streets. rt.wy.
Aur.	x	x		x
Bl.	x	x		x
Ch.	x	x		
Dan.	x	x		
Dec.	x	x	x	
E.St.L.	x	x		x
Elg.	x	x	x	x
Evan.	x	x		x
Jol.	x	x		x
Quin.	x	x		
R.I.	x	x		x
Rock.	x	x		x
Spr.	x	x	x	
Str.	x	x		
Urb,	x	x		

note, x - city has that stipulation.

Table no.6.

Standards essential to operation.					
freq & reg of cars.		criticisms of service stan- dards.	reg.max & min. speed.	penal- ty vio- lat.cl.	
Aur.	x	city officials suggest 15 min. instead 20 min.service on cert. lines.			
Bl.	x	city official rept satisfact- ory,no complaints.	x		
Ch.	x	frequency good,irreg at times prob acct rr cr.at l.C sta. most cars in poor shape. need late serv.on W.side.	x		
Dan.	x	City official repts unusually good.	x		x
Dec.	x	City official repts service satisfactory.	x		x
E.S.L.	x		x		
Elg.	x	see <u>note a</u> .for criticisms service in Elgin.(back of tables)	x		
Evan.	x	City official repts rehabili- tation of lines,1913-15. Good service now.			
Jcl.	x	City official says some compl. as to serv.Co.prompt to put on cars for spec.occasions.			
Quin.	x	No dissatisfaction with ser- vice in Quincy.	x		x
R.I.	x		x		
Rock.	x	City official repts service un- satisfactory,cars poor shape, not run on schedule.			
Spr.	x	City officials while some compl. comp.to other cities good serv.			
Str.	x		x		
Urb.	x	same criticism as to Champ above.			

note, x - city has that stipulation.

Table no.6.cont.

Standards essential to operation.

	prov.for health & safety.	joint use tracks presc. city.	extensions. prac.no th. but grants on other str. or vtime renew.	criticism in the mat- ter of extensions.
Aur.	x	x		satisfactory thru loop system and all parts city covered.
Bl.	x	x	x	service needed s.w.port Co.means extend soon as possible.
Ch.		x		satisfactory.
Dan.	x	x		City off.repts places where cars could be u- sed.Doubtful Co.extends
Dec.	x	x	x	extensions needed s.e. bding Nelson Park.Prob. built soon.
E.S.L.		x	x	
Elg:	x		x	see <u>note b.</u> (back of tables).
Evan.	x	x	x	see <u>note c.</u> (back of tables).
Jcl.	x	x	x	loop system covers ci- ty well,exten made have not paid.
Quin.	x		x	City official repts, 'Co is following the business'
R.I.	x	x	x	
Rock.	x	x	x	City off.repts ext. needed s.e.and n.pts little poss.securing .
Spr.	x	x	x	see <u>note d.</u> (back of tables)
Str.	x	x	x	
Urb.		x	x	some demand ext.to gi. service to Blair and Van Doren addit.s.Urb.

note, x - city has that stipulation.

Table no.7.

Problem of rates.

	rates. (5c)	criticisms, of rates, tickets.	trans. serv.	free rates	spec. rates	comp. to city.	city cont finan Co.	criticisms as to comp.
Aur.	x	satisfact.	x	x	x	x		
Bl.	x	good.	x	x	x		x	comp.satis. city repts. used gen purp.
Ch.	x	O.K.	x					no compensa- tion.
Dan.	x	none.	x					no compensa- tion.
Dec.	x	fair & lib. no compl.	x					car tax, \$10 works well.
E.S.L.	x		x		x	x		
Elg.	x		x	x	x			
Evan.	x		x		x	x	x	see note e, (back of tables)
Jol.	x		x			x		
Quin.	x	tickets sold on cars, in- stead stores.	x	x	x	x	x	Works well, re pts city off.
R.I.	x		x	x	x			
Rock,	x	none	x	x	x	x		
Spr.	x	\$1 worth ti- ckets on car instead stores	x					see note, f. (back of tabl es)
Str.	x		x	x	x			
Urb.	x		x					no compensa- tion.

note x - city has that stipulation.

Appendix.

Explanations of Tables 6 and 7.

note, a. The Elgin City Plan pp.40-42 suggests a scheme for routing cars to relieve congestion at the square. In favor of this it says that it would, 1. reduce the number of transfers issued, for fraud is encouraged where a dozen lines converge, 2. afford probable relief to street congestion at the Square, 3. afford greater comfort and convenience to through passengers and no sacrifice of comfort or convenience for passengers to or from the Square. It would necessitate the relocation of certain turnouts, and that double tracks be laid upon certain streets. The report also criticizes conditions with respect to maintenance and equipment, It suggests steel trolley poles be set in concrete, some of the tracks should be repaired. All tracks should be laid on 8" of stone with the ties in concrete. Poorly ventilated cars have been observed; coal gas being particularly bad on the St. Charles St. line. It also asks that a city ordinance be passed prohibiting the laying of 'T' rails upon public thoroughfares. Finally the report urges publicity in all financial matters.

note, b. In respect to extensions the Commission that reported the Elgin City Plan studied the matter carefully, in that extensions would be correlated closely to the ci-

Appendix.

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ty plan under consideration. Hence it suggests certain new lines or extensions of old ones be made, especially radial extensions which are designed to parallel streets that are to be used exclusively for vehicular traffic. This report suggests the importance of the problem thus, "Good and cheap street car transportation, or its equivalent from the point of view of service, is one of the agents for combatting the low-class multiple-family house. Well operated street car service will tempt the people to seek homes at a considerable distance from work. Frequent 5c service, good roadbeds, well-cared -for equipment, lines so located that no areas will be further from the nearest line than one-half mile, universal transfers and routing so arranged as to serve the majority effectively and comfortably are controlling factors in good street car transportation."⁽¹⁾

note, c. At present in the city of Evanston the only street railway line runs north and south. People living west of the lake are demanding service in the form of a cross-town line to the village of Niles Center, five miles west. Two companies are contending for the license. The local company now operating north and south in the city wants to build a loop which will swing out west to Niles and come back into the city and up the Main St. A separate
(1) Elgin City Plan, p.40.

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company is also seeking to build this proposed Fox River line from Nile Center to Evanston. Nothing definite has been done yet.

note, d. One of the city commissioners in Springfield says the matter of extension is important but asserts that the main deterrent there is the consideration whether the proposed extension will be profitable as a business venture, and hence says he is not prepared to say whether extensions could be justified in Springfield by the revenue that they would yield.

note, e. One of the city officials in Evanston reports that for the first year after the Evanston Traction Company's license was granted, 1913/1914, the City received as compensation the sum of \$ 8,263.16. Inasmuch as the ordinance provided that when the Company expended \$ 266,000 in rehabilitating the system under the supervision of the board of engineers there should be no compensation for three years ensuing, the Company has not been required to pay anything to the City since July 1, 1914. The next compensation on the basis of 95% to the company and 5% to the city will begin July 1, 1917. The author was informed that the road has been placed in good shape through the expenditure of the \$200,000 above and is kept so through the rigid supervision of the Board of Engineers created

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to regulate the operation and maintenance of the street railway. To date their work has been so satisfactory and their relations so harmonious that no dispute has arisen between the City Engineer and the Company Engineer (composing the board) serious enough to call in a third party as provided in the ordinance in case of disagreement between the members of the board.

note, f. Compensation in Springfield is on the basis of an agreement entered in 1908 between the City and the Springfield Consolidated Company providing for the payment of 2% of the gross earning during the first ten years of the grant and 4% during the last ten years. The history of this is set forth as follows,

"Negotiations were pending about the time of the Chicago settlement in which the City of Chicago received 55%⁽¹⁾ of the net profits. The radical group here tried to secure franchise contracts as favorable as 15% of the gross earning as the city's share believing that that would be about the equivalent of the Chicago settlement. However, thru the combined action of the big business interests of the city, the City Council compromised and also thru the sinister manipulation of the City Council, the compensation as above (2% , 1908-1918, 4%, 1918-1928.) was agreed upon as a compromise. The people of this city are

(1) the commissioner did not quote the Chicago settlement correctly. It is 55% of the net profits, after certain specified deduction have been made.

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just beginning to realize that the settlement gives the city an insignificant share of the net profits. Instead of of 55% it is perhaps less than 10%."

The above quotation goes on to compare the situation with the compensation agreement in Toronto, Canada. I append here a summary of the Toronto agreement and what it nets the city to illustrate the fact that higher proportions of the earnings of a street railway company can be exacted and yet permit the company to make a handsome profit. It should be noted, however, that one cannot compare Toronto's plan with those in operation in this state, because the city of Toronto owns the lines of street railway and hence was able to make much more favorable terms as to really what amounts, in a sense, to a rental sum. Still the figures show that Illinois cities, that have made slight demands for compensation for valuable privileges in the past, can well afford to study the situation very closely in order to determine more accurately what the value of the rights are.

Toronto, when it entered the agreement with the Toronto Railway Company, was a city of 181,000. Now it has nearly a half million of people. This also prevents comparisons. The agreement of 1892 under which the Company is paying compensation today is on the following basis,

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1. \$800 per single track or \$1600 per double track car mile.

2. 8% of gross earnings up to \$1,000,000.

10% " " \$1,000,000 - 1,500,000

12% " " \$1,500,000 - 2,000,000

15% " " \$2,000,000 - 3,000,000

20% " " over \$3,000,000.

3. Should the company stop selling 8 tickets for 25c, 2%
(1)
additional must be paid to the city.

The following statistics for the past three years illustrates this compensation above provided for and receipts to the city therefrom.

	mileage.	percent.	Total.
1913 city received	\$91,466.	\$939,990.	\$1,031,457.
1914 " "	\$95,756.	\$955,740	\$1,051,497.
1915 " "	\$96,576	\$868,254	\$ 964,831.

also in 1915 company paid \$9,225 taxes.

Total compensation paid the city, 1891-1915, \$10,276,269.

In 1915 as debt charges for ownership of the street railway the city paid out,

Interest -\$155,476.

Sink.fund-\$394,640.

Total debt charges. \$550,116. Net over debt charges,
\$414,715.35

Profits of the company after paying above sums, to City.
(2)

\$1,192,489.

(1) Toronto, Statutes, 1894, pp. 381-382.

(2) Municipal Handbook of Toronto, 1916, pp. 46, 65-66.

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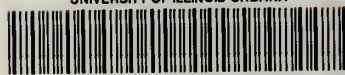
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